

No. 14-50095

**In the United States Court of Appeals
for the Ninth Circuit**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MICHAEL JOSEPH PEPE,
Defendant-Appellant.

On Appeal from the United States District Court
for the Central District of California
The Honorable Dale S. Fischer, Presiding
No. CR-07-00168-DSF

Appellant's Excerpts of Record
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UNITED STATES DISTRICT COURT
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Case No.	CR NO. 07-168 DSF				Date	December 3, 2007			
Present: The Honorable	DALE S. FISCHER, United States District Judge								
Interpreter	N/A								
Paul Pierson		Not Present			Not Present				
Deputy Clerk		Court Reporter			Assistant U.S. Attorney				
U.S.A. v. Defendant(s):		Present	Cust.	Bond	Attorneys for Defendants:		Present	App. Ret.	
MICHAEL JOSEPH PEPE		NOT	X		CARLTON F. GUNN		NOT	X	

Proceedings: (In Chambers) Order Denying Defendant's Motion To Dismiss Indictment (filed 10/4/07)

Defendant Michael Joseph Pepe is charged with four counts of "engaging in illicit sexual conduct in foreign places" in violation of 18 U.S.C. § 2423(c). The indictment alleges that, between September 2005 and June 2006, Defendant traveled to Cambodia and engaged in illicit sexual conduct with four minors. Presently before the Court is Defendant's Motion To Dismiss Indictment. For the reasons set forth below, Defendant's Motion is denied.

I. FACTUAL BACKGROUND

According to the Government, in June 2006, two non-governmental organizations provided information to the United States Immigration and Customs Enforcement ("ICE") Bangkok office that a United States citizen, later identified as Defendant, had sexually abused and raped a number of children at his compound in Phnom Penh, Cambodia. (Aff. of Eddy

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Wang (“Wang Aff.”) ¶ 6.)¹ An ICE agent interviewed four of the child victims (between the ages of 9 and 12), all of whom identified Defendant as the individual who had sexually abused them. (*Id.*) According to Defendant, he had lived in Cambodia since March 2003, returning to the United States occasionally. (Mot. 5.) His last flight from the United States to Cambodia departed on September 1, 2005 and arrived on September 3, 2005. (*Id.* at 6.) According to the indictment, Defendant engaged in illicit sexual conduct sometime between September 1, 2005 and June 17, 2006.

II. LEGAL STANDARD

Under Rule 12(b) of the Federal Rules of Criminal Procedure, a party may file a motion to dismiss based on “any defense, objection, or request that the court can determine without a trial of the general issue.” Fed. R. Crim. P. 12(b); United States v. Shortt Accountancy Corp., 785 F.2d 1448, 1452 (9th Cir. 1986). In considering a motion to dismiss, the court is limited to the face of the indictment and must accept the facts alleged in that indictment as true. Winslow v. United States, 216 F.2d 912, 913 (9th Cir. 1955). A court must decide such a motion before trial “unless it finds good cause to defer a ruling.” Fed. R. Crim. P. 12(d); Shortt Accountancy, 785 F.2d at 1452 (citing former Fed. R. Crim. P. 12(e)).

III. DISCUSSION

A. Congress May Regulate Illicit Sexual Conduct Engaged in Eight or Nine Months After Travel

1. Application of Section 2423(c) Eight or Nine Months After Travel Is a Valid Exercise of Congress’s Foreign Commerce Power

Defendant is charged with violating 18 U.S.C. § 2423(c), which provides that “[a]ny United States citizen or alien admitted for permanent residence who travels in foreign commerce, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.” The Ninth Circuit has ruled that

¹ The Affidavit of Eddy Wang was submitted in connection with the Criminal Complaint, filed September 27, 2006.

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Congress's enactment of this statute was a valid exercise of its powers under the Foreign Commerce Clause, U.S. Const. art. I, § 8, cl. 3, holding that the "combination of requiring travel in foreign commerce, coupled with engagement in a commercial transaction while abroad, implicates foreign commerce to a constitutionally adequate degree." United States v. Clark, 435 F.3d 1100, 1114 (9th Cir. 2006). In Clark, the defendant committed an illicit commercial sex act two months after arriving in Cambodia. Id. at 1103. In a footnote, the court reserved the question of "[w]hether a longer gap between the travel and the commercial sex act could trigger constitutional or other concerns." Id. at 1108 n.11. Defendant argues that an asserted eight or nine month gap between his travel to Cambodia and allegedly engaging in illicit sexual conduct renders application of § 2423(c) to him unconstitutional.² The Court is not persuaded.

As an initial matter, Defendant argues that he was no longer traveling at the time he allegedly engaged in illicit sexual conduct, because he permanently resided in Cambodia. (See, e.g. Reply 8.) But the definition of "travel" is not the focus of the constitutional question presented here, because Defendant did not have to be traveling at the time he engaged in illicit sexual conduct in order to be liable under § 2423(c). Clark at 1107-08; United States v. Jackson, 480 F.3d 1014, 1017 (9th Cir. 2007) ("In light of *Clark*, an individual can violate § 2423(c) even if he stops traveling before he engages in illicit sex.") The question is not whether Defendant was traveling at the time he engaged in illicit sexual conduct, but whether a close temporal proximity between completed travel and illicit sexual conduct is required. The definition of "travel" is not wholly irrelevant to this analysis, as a broad definition of travel (e.g. one encompassing the entire time one is overseas) would shorten or eliminate the gap between the end of travel and illicit sexual conduct. But even under a narrow definition of travel, construed as terminating on arrival in another country, Clark supports application of § 2423(c) here.

In Clark, the Ninth Circuit construed Congress's foreign commerce power very broadly. The court described such power as "sweeping," (id. at 1113) "exclusive[,] and plenary" (id. at

² The Court's consideration is limited to the face of the indictment and it must accept the facts alleged in that indictment as true. Winslow, 216 F.2d at 913. The indictment alleges violations of 18 U.S.C. § 2423(c). Three counts allege that "[b]etween on or about September 1, 2005, and on or about June 17, 2006," Defendant committed the elements of the offense. One alleges that "[b]etween on or about September 1, 2005, and on or about June 12, 2006," Defendant committed the elements of the offense. Accepting these allegations as true, it is possible that Defendant's illicit sexual conduct occurred up to nine months after his last travel to Cambodia. The Government presents evidence that the illicit conduct occurred as early as December 2005. (See Opp'n 6-7; Wang Decl. ¶¶ 3-4, Exs. 4-5.) Defendant disputes this evidence. (See Reply 7.) The Court need not resolve the dispute, as it concludes even an eight or nine month gap would not be grounds for dismissal.

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1109 (internal quotation omitted)), and noted that “the Supreme Court has never struck down an act of Congress as exceeding its powers to regulate foreign commerce.” *Id.* Finding that the Foreign Commerce Clause confers powers greater than those under the interstate commerce clause, the court held that it was not limited to the three areas in which Congress may exercise interstate commerce power: (1) channels of commerce; (2) instrumentalities of commerce; and (3) activities substantially affecting commerce. *Id.* at 1116. Instead, it held that a statute is a valid exercise of Congressional power where it “bears a rational relationship to Congress’s authority under the Foreign Commerce Clause” or “fairly relates to foreign commerce.” *Id.* at 1114. Recognizing that “the Commerce Clause comprehend[s] every species of commercial intercourse between the United States and foreign nations,” (*id.*), the court determined that “commercial sex acts with minors” constitute commercial activity subject to Congress’s foreign commerce power. *Id.* at 1114-15.

In *Clark*, “[t]he combination of Clark’s travel in foreign commerce and his conduct of an illicit commercial sex act in Cambodia shortly thereafter put[] the statute squarely within Congress’s Foreign Commerce Clause authority.” 435 F.3d at 1116 (emphasis added). This language might imply some time limit within which illicit sexual conduct must occur after travel. However, given the breadth of Congress’s foreign commerce power and the *Clark* court’s determination that criminalizing illicit sexual conduct engaged in two months after travel fell “squarely within Congress’s Foreign Commerce Clause authority,” *id.* (emphasis added), an asserted eight or nine month gap between travel and engaging in illicit sexual conduct would not render application of § 2423(c) in excess of Congress’s foreign commerce power. Indeed, Defendant’s argument – by focusing exclusively on proximity to travel as the basis for Congress’s authority for enacting § 2423(c) – entirely ignores *Clark*’s holding that the type of illicit sexual conduct of which Defendant is accused is itself commercial.³ *Id.* at 1114-

³ “Illicit sexual conduct” can be either commercial or non-commercial. 18 U.S.C. § 2423(f)(1)-(2). A commercial sex act is defined as “any sex act, on account of which anything of value is given to or received by any person.” *Id.* § 2423(f)(2). *Clark* held only that the “commercial” prong of the statute was a valid exercise of Congress’s foreign commerce power, reserving the question of whether the non-commercial prong was constitutional. 435 F.3d at 1110. Defendant contends that “the alleged acts are primarily non-commercial in nature and are based more on allegations of physical force and intimidation.” (Mot. 12.) In addition to admitting some commercial component to Defendant’s alleged activities, this statement is also untrue. The Court does not here decide what conduct Defendant actually engaged in, but Defendant is accused of paying a prostitute to broker deals with minors’ families whereby he paid them to let the girls live in his house and satisfy his sexual desires. (Wang Decl., Ex. 3, bates 233-35.) In addition, he is alleged to have paid the minors each time he sexually abused them. (*Id.* at Ex. 5, Bates 240-41.) As in *Clark*, “[t]his conduct might be immoral and criminal, but it is also commercial.” *Id.* at 1103.

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15. That illicit sexual conduct is itself commercial suggests that it need not be in particularly close temporal relationship to travel in order to be subject to regulation by Congress. Moreover, that the foreign commerce power is not limited to channels or instrumentalities of commerce likewise suggests that close temporal proximity to foreign travel is not a prerequisite to congressional power. Under Clark, an eight or nine month gap between travel and illicit sexual conduct does not render application of § 2423(c) in excess of Congress's foreign commerce power.

2. Application of Section 2423(c) Eight or Nine Months After Travel Is a Valid Exercise of Congress's Power Under the Necessary and Proper Clause

In addition, § 2423(c) is a valid exercise of Congress's power under the Necessary and Proper Clause, U.S. Const. art. I, § 8, cl. 18. In 2002, the Senate ratified the Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (the "Optional Protocol"), July 5, 2000, S. Treaty Doc. No. 106-37, 2000 WL 33366017. The Optional Protocol provides, in relevant part:

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offenses are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in article 2:

(i) The offering, delivering or accepting, by whatever means, a child for the purpose of:

a. Sexual exploitation of the child; . . .

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2; . . .

3. Each State Party shall make these offences punishable by appropriate penalties that take into account their grave nature;

4. Subject to these provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offenses established in paragraph 1 of the present article.

Id. at art. 3.1. "Sale of children" is defined as "any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration." Id. at art. 2(a). "Child prostitution" is defined as "the use of a child in sexual activities for remuneration or any other form of consideration." Id. at art. 2(b).

If a treaty itself does not create legally enforceable domestic obligations, then Congress has the power to pass such legislation as is necessary and proper to implement the treaty. See Missouri v. Holland, 252 U.S. 416, 432 (1920) ("If the treaty is valid there can be no dispute

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about the validity of the statute under Article 1, Section 8, as a necessary and proper means to execute the powers of the Government.”); Whitney v. Robertson, 124 U.S. 190, 194 (1888); United States v. Bramble, 103 F.3d 1475, 1480 (9th Cir. 1996).⁴ If § 2423(c) bears some reasonable relationship to a grant of power to the national government, and it is not otherwise prohibited by the Constitution, the Court must find the law to be “necessary and proper.” See M’Culloch v. Maryland, 17 U.S. 316, 421 (1819) (“Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.”).

Section 2423(c) bears a rational relationship to and reasonably implements the Optional Protocol, which explicitly requires signatories to criminalize the acts of purchasing a child for sexual exploitation or obtaining a child for child prostitution “domestically or transnationally.” See United States v. Frank, 486 F. Supp. 2d 1353, 1358-59 (S.D. Fla. 2007). It is thus a necessary and proper means of implementing the government’s treaty-making power. Because this grant of authority does not derive from regulation of commerce, there is no basis for limiting application of § 2423(c) to illicit sexual conduct engaged in within a defined period of time after travel in foreign commerce.

Application of § 2423(c) to illicit sexual conduct engaged in eight or nine months after travel is not unconstitutional.⁵

B. The Language of Section 2423(c) Covers Sexual Conduct Engaged in Eight or Nine Months After Travel

Defendant’s statutory interpretation arguments are similarly unavailing. Defendant urges

⁴ Treaties and laws passed pursuant to them are not “free from the restraints of the Constitution,” Reid v. Covert, 354 U.S. 1, 16 (1957), such as the Bill of Rights. Defendant primarily contends that § 2423(c) exceeds Congress’s constitutional authority, not that it infringes his enumerated constitutional rights. As Defendant concedes, his claim that application of § 2423(c) would violate the Due Process Clause of the Fifth Amendment is foreclosed under Clark. See 435 F.3d at 1108-09.

⁵ The language of the Optional Protocol suggests that it concerns only commercial illicit sexual conduct. The Court does not decide whether criminalizing non-commercial illicit sexual conduct is valid under the Necessary and Proper Clause.

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the Court to construe § 2423(c) so as to avoid constitutional questions and to comport with the rule of lenity. (Mot. 13.) Defendant advocates a narrow interpretation of the statute that would preclude liability whenever sufficient time passes after travel. But there is nothing in the text of § 2423(c) that could be interpreted as imposing any temporal relationship between the elements of the offense. Section 2423(c) imposes criminal liability on “[a]ny United States citizen or alien admitted for permanent residence who travels in foreign commerce, and engages in any illicit sexual conduct with another person” (emphasis added). Under this language, there is no requirement that the illicit sexual conduct occur within any period of time after travel. Defendant argues that if Congress had intended that illicit sexual conduct could occur at any time after travel, it could have explicitly said so. (Mot. 14-16.) But Congress could also have explicitly stated that the illicit sexual conduct must occur within a specified period of time after travel. It did not. The statute is simply silent on the temporal relationship between the elements.⁶

Defendant argues that the word “and” joining the elements of the offense supplies this temporal element, because it means “immediately soon afterward” or “next in order of time.” (Mot. 13.) However, arguing that “and” means “then” and that “then” means “immediately soon afterward” does not establish the plain meaning of the word “and.” In ordinary usage, “and” means “and.” Moreover, Defendant’s construction of the statute is incompatible with Clark’s holding that § 2423(c) covers illicit sexual conduct engaged in two months after travel. The language of § 2423(c) cannot be construed as Defendant suggests.

C. Defendant’s Remaining Arguments Are Foreclosed by Clark

Defendant argues that application of § 2423(c) violates international law and deprives Defendant of due process. (Mot. 16-19.) As Defendant concedes (Mot. 16 n.3.), both of these arguments are foreclosed by Clark, which held that § 2423(c) is valid under international law and comports with due process. 435 F.3d at 1106-09.

IV. CONCLUSION

⁶ Because the statute is silent, rather than ambiguous, concerning the temporal relationship between the elements, the Court does not consider the legislative history of Section 2423(c). See Abrego Abrego v. The Dow Chem. Co., 443 F.3d 676, 683 (9th Cir. 2006) (holding that a statute’s silence does not create ambiguity necessary for consideration of legislative history).

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The timing of Defendant's alleged illicit sexual conduct does not place his conduct outside the scope of § 2423(c) or render the application of § 2423(c) unconstitutional. Defendant's Motion To Dismiss Indictment is DENIED.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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Case No.	CR 07-168 DSF				Date	December 5, 2007			
Present: The Honorable	DALE S. FISCHER, United States District Judge								
Interpreter	N/A								
Paul Pierson		Not Present			Not Present				
Deputy Clerk		Court Reporter			Assistant U.S. Attorney				
U.S.A. v. Defendant(s):		Present	Cust.	Bond	Attorneys for Defendants:		Present	App. Ret.	
MICHAEL JOSEPH PEPE		NOT	X		CARLTON F. GUNN		NOT	X	

Proceedings: (In Chambers) Order DENYING Defendant's Motion To Suppress Evidence Discovered as Result of Computer Media Search Warrant, DENYING in Part Defendant's Motion To Suppress Evidence, and Ordering Further Briefing

Defendant Michael Joseph Pepe is charged with four counts of "engaging in illicit sexual conduct in foreign places" in violation of 18 U.S.C. § 2423(c). The indictment alleges that, between September 2005 and June 2006, Defendant traveled to Cambodia and engaged in illicit sexual conduct with four minors. Presently before the Court are Defendant's Motion To Suppress Evidence ("First Motion") and Motion To Suppress Evidence Discovered as Result of Computer Media Search Warrant (the "Second Motion"). Defendant seeks suppression of: 1) evidence obtained in a search of his residence by Cambodian police involving a United States official (the "Cambodian Search"); 2) evidence obtained through a forensic examination, conducted by United States officials in Singapore, of digital media seized in the Cambodian Search (the "Singapore Search"); and 3) evidence obtained through the search, pursuant to a United States warrant, of other digital media seized in the Cambodian Search (the "U.S. Search").

For the reasons set forth below, Defendant's Second Motion is DENIED, and the First Motion is DENIED in part. The Court requires additional briefing to determine some issues

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raised in the First Motion.

I. BACKGROUND

In June 2006, two non-governmental organizations provided information to the United States Immigration and Customs Enforcement (“ICE”) Bangkok office that a United States citizen, later identified as Defendant, had sexually abused and raped a number of children at his compound in Phnom Penh, Cambodia. (Aff. of Eddy Wang (“Wang Aff.”) ¶ 6.)¹ An ICE agent interviewed four of the child victims (between the ages of 9 and 12), all of whom identified Defendant as the individual who had sexually abused them. (*Id.*)

The Cambodian National Police (“CNP”) arrested Defendant and executed search warrants at his compound, where evidence of sexual abuse of child victims was seized. (*Id.*) An ICE agent was present at the search, took photographs, and observed evidence. (Decl. of Gary J. Phillips (“Phillips Decl.”) ¶ 13.) The evidence seized in the Cambodian Search included pornographic photographs, a computer, emails, and digital media containing child pornography. (Wang Aff. ¶ 10(e).) ICE Bangkok took possession of evidence seized in the Cambodian Search. (See First Mot. Ex. D.) ICE Bangkok forwarded the computer hard drive and some of the digital media to ICE Singapore, where a forensic examination of the evidence was performed. (Wang Aff. ¶ 10(e).) Defendant asserts, and the Government does not deny, that no U.S. warrant was obtained prior to this examination. (First Mot. 6.) A thumb drive found in Defendant’s compound contained a number of pornographic images of young girls posing in a sexually explicit manner on Defendant’s bed and showering in his bathroom. (Wang Aff. ¶ 18.) Pornography found on Defendant’s computer included, *inter alia*, images of children undressing and posing in a sexually explicit manner (*id.* ¶ 19(a)), a young Asian girl naked with her wrists bound to Defendant’s bed (*id.* ¶ 19(c)(v)), and girls performing oral sex on a person closely matching Defendant’s physical description. (*Id.* ¶ 19(c)(iv) & (vi).)

A search of computer media in the United States pursuant to a warrant issued May 17, 2007 produced additional evidence. The affidavit in support of this warrant contained references to evidence discovered in the Singapore Search. (See Second Mot. Ex. A at Bates 936-42.)

II. DISCUSSION

¹ The Affidavit of Eddy Wang was submitted in connection with the Criminal Complaint, filed September 27, 2006.

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A. The Cambodian Search Was Not a Joint Venture

Defendant contends that evidence seized during the Cambodian Search should be suppressed because the search did not comply with Cambodian law. Generally, neither the Fourth Amendment nor the judicially created exclusionary rule applies to acts of foreign officials. United States v. Barona, 56 F.3d 1087, 1091 (9th Cir. 1995). Two “very limited exceptions” apply. Id. The first occurs “if the circumstances of the foreign search and seizure are so extreme that they ‘shock the [judicial] conscience,’ [so that] a federal appellate court in the exercise of its supervisory powers can require exclusion of the evidence.” Id. (internal quotation omitted; alteration in original). Defendant does not contend that the Cambodian Search shocked the conscience.

“The second exception to the inapplicability of the exclusionary rule applies when United States agents’ participation in the investigation is so substantial that the action is a joint venture between United States and foreign officials.” Id. (internal quotation omitted). “If a joint venture is found to have existed, the law of the foreign country must be consulted at the outset as part of the determination whether or not the search was reasonable.” Id. (internal quotation omitted). “If foreign law was not complied with, the good faith exception to the exclusionary rule becomes part of the analysis.” Id. at 1092-93 (internal quotation omitted). “The good faith exception is grounded in the realization that the exclusionary rule does not function as a deterrent in cases in which the law enforcement officers acted on a reasonable belief that their conduct was legal.” Id. at 1093.

“Whether the search does become a joint venture can be determined only by a comparison of what the Federal agent did in the search and seizure with the totality of acts done in the search and seizure.” United States v. Stonehill, 405 F.2d 738, 744 (9th Cir. 1969). The reason that the Fourth Amendment and the exclusionary rule do not apply to foreign officials is that “there is nothing our courts can do that will require foreign officers to abide by our Constitution.” Id. at 743. This suggests that the exclusionary rule should apply only where participation and control by U.S. officials is substantial enough that the deterrent effect of the exclusionary rule could have ensured that a search would be conducted in accordance with the Fourth Amendment. U.S. participation in the Cambodian Search did not rise to this level, and was similar to that of U.S. officials in cases where no joint venture was found.

Non-governmental organizations independently informed both the CNP and the ICE Bangkok office that they had received information that Defendant had sexually abused and raped a number of children at his compound. (Phillips Decl. ¶¶ 3-4.) When they informed ICE Agent Phillips, the CNP had already begun investigation of Defendant. (Id. ¶ 4.) CNP continued surveillance of Defendant, interviewed one victim, and located Defendant’s home.

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(Id. ¶¶ 4-6.) Although Agent Phillips offered assistance to the CNP, they did not request help in their investigation until after the search. (Id. ¶ 9.)

Cambodian police later arrested Defendant for rape and debauchery in violation of Cambodian law. (Id. ¶ 10.) Agent Phillips did not instruct or advise the CNP to arrest Defendant and was not present during the arrest.² (Id. ¶ 10.) Prior to the arrest, CNP had obtained a search warrant for Defendant's residence. (Id. ¶ 11, Ex. A.) Agent Phillips did not instruct or advise CNP to obtain a search warrant. (Id. ¶ 12.) CNP transported Defendant to his residence and executed the search warrant. (Id. ¶¶ 10-11.) Approximately twenty CNP officers were present in Defendant's home.³ (Id. ¶ 13.) Agent Phillips was also present, taking photographs and observing evidence.⁴ (Id. ¶ 13.) Two days after the search was concluded, CNP placed seized items into bags and took them to CNP offices. (Id. ¶ 14.) Several days later, U.S. officials took possession of some of the evidence seized.⁵ (See First Mot. Ex. D.)

As can be seen from the foregoing facts, Agent Phillips' role in planning and executing the search was insubstantial. He did not have the kind of involvement or influence that would make application of the exclusionary rule an effective means of ensuring compliance with the Fourth Amendment. There is also no evidence that the government here was using foreign officials in order to violate "the Constitution by circuitous and indirect methods." Stonehill,

² Defendant contends that U.S. officials were present at the arrest. (First Mot. 4.) However, the report cited by Defendant in support of this contention states only that "the CNP arrested PEPE for rape and debauchery." (First Mot. Ex. A at 3.) Even if U.S. officials had been present, the Court's conclusion would be the same.

³ Defendant's assertion that "at least as far as [he] could see . . . the Cambodian police officers did very little searching," and that "[m]ost of the searching that [he] was able to see was done by an American agent . . . ans [someone] working for a non-governmental organization" (Decl. of Michael Pepe ¶ 4) is not persuasive, given the on-going CNP investigation, the active role the CNP took in investigating Defendant, arresting him, and procuring a search warrant, and the large number of CNP officers present during the search.

⁴ Defendant contends that an agent from the Diplomatic Security Service was also present. (First Mot. 4.) However, Defendant does not provide any indication of what this agent is supposed to have done during the search, instead relying exclusively on the acts of Agent Phillips as demonstrating a joint venture.

⁵ Defendant submits a copy of a "Custody Receipt for Seized Property and Evidence" that appears to document the transfer of evidence from the CNP to U.S. officials. (First Mot. Ex. D.) It is unclear from this document what proportion of the evidence seized was turned over to U.S. authorities; however, the Court assumes for the purpose of this motion that it was substantial.

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405 F.2d at 744, 746. Agent Phillips did not request the arrest or search. (Phillips Decl. ¶¶ 10, 12.) The CNP initiated an investigation prior to any U.S. knowledge of accusations against Defendant, located Defendant's home, arrested Defendant for Cambodian violations, and obtained a search warrant without aid from U.S. officials.⁶ (*Id.* ¶¶ 4, 10, 12.) The CNP also conducted the search and took custody of the seized evidence. (*Id.* ¶¶ 11, 13-14.) These facts support a finding that there was no joint venture. *See United States v. Benedict*, 647 F.2d 928, 930-31 (9th Cir. 1981) (finding no joint venture where "[t]he actual seizures, the custody of evidence, and the arrest of [the defendant] were effected in furtherance of a Thai prosecution"). The CNP was conducting – and controlling – its own investigation.

Although Agent Phillips was present at the search, took photographs, and observed evidence, this is not sufficient to make the search a joint venture. *See United States v. Behety*, 32 F.3d 503, 511 (11th Cir. 1994) (holding that U.S. agents' presence at and videotaping of search by Guatemalan officials did not trigger the exclusionary rule); *Benedict*, 647 F.2d at 931 (holding that U.S. agents' mere presence at search by Thai officials was insufficient to create a joint venture); *Stonehill*, 405 F.2d at 741-42 (holding that U.S. agents' suggestion of areas to search and evidence to seize did not create joint venture). Likewise, that evidence from the search was turned over to U.S. officials does not create a joint venture. *See Stonehill*, 405 F.2d at 741-42. The Court finds that the CNP conducted the search in service of its own investigation, which pre-dated that of Agent Phillips. Given the evidence of CNP's independent investigation, that U.S. agents took over Defendant's prosecution after the search does not establish sufficient U.S. involvement in the search to invoke the Fourth Amendment.

At the October 29, 2007 hearing on the Motions ("Oct. 29 Hearing"), Defendant introduced into evidence portions of a videotape of the search. The videotape showed Agent Phillips looking through documents at the end of the search, picking up a stuffed animal, telling a CNP officer that he should seize a bottle of oil that one victim had told Agent Phillips was used in sexually assaulting her, and shining a black light on a mattress. These activities also do not establish a joint venture. They show at most a tangential role in the search and are consistent with Agent Phillips' statements that he was engaged in an independent, parallel investigation. Such activities fall far short of the coordinated conduct in cases finding a joint

⁶ At the October 29 hearing on the Motions, Defendants relied on a Powerpoint presentation stating that U.S. agents had coordinated with the CNP in obtaining an arrest warrant for Defendant. The Court finds that this presentation, which was compiled by multiple authors and was not intended to detail the respective activities of U.S. and foreign agents in Defendant's arrest, does not impeach Agent Phillips' testimony that U.S. officials were not involved in Defendant's arrest. The Court credits Agent Phillips' testimony at the hearing that the presentation reflected the fact that the CNP kept U.S. officials informed of the arrest.

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venture. See United States v. Peterson, 812 F.2d 486, 490 (9th Cir. 1987) (finding joint venture where U.S. agents termed the investigation a “joint investigation,” and were “involved daily in translating and decoding intercepted transmissions, as well as advising the Philippine authorities of their relevance.”); Barona, 56 F.3d at 1094 (finding a joint venture where “American agents requested the wiretaps, information obtained was immediately forwarded to them, and throughout the surveillance a Spanish to English interpreter was provided by the United States.”)

Because the Cambodian Search was not a joint venture with American agents, it was not subject to the Fourth Amendment, and Defendant’s request to suppress evidence seized during the search must be denied.

B. The Evidence Obtained Pursuant to the May 17, 2007 Warrant Should Not Be Suppressed

On May 17, 2007, the Government obtained a warrant authorizing the search of computer media seized from Defendant’s residence in the Cambodian Search. Defendant argues that evidence found pursuant to this warrant (the “Computer Media Evidence”) should be suppressed either because: 1) the Cambodian Search was unlawful; 2) the affidavit supporting the warrant was based in part on evidence unlawfully obtained in the Singapore Search; or 3) the search pursuant to the warrant was overly broad. Because the Cambodian Search was not unlawful, Defendant’s first argument fails. As will be discussed below, the Court requires further briefing in order to determine the legality of the Singapore Search. Nonetheless, even assuming that evidence obtained in the Singapore Search should be suppressed, the Computer Media Evidence should not.

“When an affidavit contains evidence illegally obtained, [a] reviewing court should excise the tainted evidence and determine whether the remaining, untainted evidence would provide a neutral magistrate with probable cause to issue a warrant.” United States v. Barajas-Avalos, 377 F.3d 1040, 1054 (9th Cir. 2004) (internal quotation omitted; alteration in original). If such probable cause existed and the agents would have sought a warrant without the illegally obtained evidence, then the warrant stands. See Murray v. United States, 487 U.S. 533, 542-43 (1988); United States v. Duran-Orozco, 192 F.3d 1277, 1281 (9th Cir. 1999).

The Government represented at the December 3, 2007 Hearing that Defendant was under investigation for violation of 18 U.S.C. § 2423(c) (engaging in foreign travel and illicit sexual conduct) and 18 U.S.C. § 2260 (production of child pornography for importation to the United States. Excising all references to evidence obtained in the Singapore Search, the affidavit in

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support of the May 17, 2007 warrant details the following: 1) the victims' identification of Defendant as the person who sexually abused them (Second Mot. Ex. A ¶ 9); 2) the labeling of some computer media to be searched with the names "15 years old little girls with crazy sex event," "14 Years Old Unsensor," "GIRLS NOW," "GIRLS 121005," and "CHRISTMAS 2005"⁷ (*id.* ¶¶ 6, 15); and 3) a letter from Defendant to his sister, in which Defendant mentioned several of his victims by name, described massages by his victims leading to "inappropriate touching, etc.," described binding and slapping one of the victims after taking Viagra, and recounted taking and storing on his computer naked pictures of two nieces of the prostitute who allegedly brokered the victims' sale to him.⁸ (*Id.* ¶ 16.) "Probable cause means only a 'fair probability,' not certainty, and requires consideration of the totality of the circumstances." U.S. v. Hill, 459 F.3d 966, 970 (9th Cir. 2006). After excising any reference to evidence obtained in the Singapore Search, the remaining portions of the affidavit were clearly sufficient to support a "fair probability" that the computer media searched would contain evidence of the crimes for which Defendant was being investigated. It is also sufficient to have prompted the agents to seek a warrant. Even assuming that the Singapore search was unlawful, the warrant remains valid.

Defendant also argues that the search was overbroad, in that it included media that was not labeled in a suggestive manner and did not include a protocol for limiting the search of Defendant's computer. These arguments are without merit. As explained in Hill,

Computer records are extremely susceptible to tampering, hiding, or destruction, whether deliberate or inadvertent. Images can be hidden in all

⁷ Although not necessarily suggestive, a title like "GIRLS 121005" supports probable cause to believe that evidence establishing when the victims were in Defendant's household would be found on computer media.

⁸ Defendant notes that these pictures were actually described as having been deleted from the computer. This was nonetheless support for believing that Defendant used his computer for storing photographs. Defendant also points out that there is no indication in the letter that the prostitute's nieces were minors. Nonetheless, given the other evidence that Defendant possessed child pornography (such as the suggestive names of computer media), and the identification of Defendant as their abuser by the victims, that Defendant used his computer for storing photographs of any kind supported a 'fair probability' that evidence of criminal activity would be found there. Indeed, it would be reasonable to suspect that photographs would be stored on the computer even without the evidence of pictures of the prostitute's nieces having been stored there.

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manner of files, even word processing documents and spreadsheets. Criminals will do all they can to conceal contraband, including the simple expedient of changing the names and extensions of files to disguise their content from the casual observer. Forcing police to limit their searches to files that the suspect has labeled in a particular way would be much like saying police may not seize a plastic bag containing a powdery white substance if it is labeled "flour" or "talcum powder." There is no way to know what is in a file without examining its contents, just as there is no sure way of separating talcum from cocaine except by testing it.

459 F.3d at 978. That the Government did not explicitly state in the warrant affidavit that users of child pornography are likely to keep pornography in many locations does not destroy probable cause to search all computer media, however titled. If incriminating files are to be found in one medium, they are reasonably likely to be found in another. For the same reason, searching Defendant's computer and computer media when Defendant possesses computer disks with names like "14 Years Old Unsensory," is hardly "indiscriminate fishing," as suggested by Defendant. (See Reply 9.) That Defendant stored a naked photograph of his prostitute's niece on his computer further supported probable cause to search his computer and computer media. There was certainly a "fair probability" that evidence of the crimes for which Defendant was being investigated would be found there.

It was also reasonable to conduct searches of Defendant's computer files that were not suggestively labeled. Defendant has not proposed any search protocol that would reasonably preserve Defendant's privacy while allowing for the above-noted dangers of tampering or destruction of computer evidence. Similarly, searching text files was not unreasonable. First, as noted in Hill, the extensions of computer files (which would indicate whether a file was a text or image file) can be changed to conceal contraband. Second, evidence of crime was likely to be found in text files. As Agent Wang states in his declaration, pedophiles often document and correspond with other pedophiles about their activities. (Decl. of Eddy Wang ¶ 4.) He further testified at the December 3 Hearing on the Motion to Suppress that he searched for journals or fantasy writing often produced by pedophiles.

The May 17, 2007 warrant and search pursuant to it were not overbroad. The warrant was supported by probable cause, whether or not the evidence from the Singapore Search is excised from the supporting affidavit. The evidence found pursuant to the May 17, 2007

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warrant will not be suppressed.⁹

C. The Court Requires Additional Briefing to Assess the Legality of the Singapore Search

After the Cambodian Search, U.S. agents sent a computer hard drive, a thumb drive, and a digital media card to Singapore for forensic examination. (Wang Aff. ¶ 10(e).) Defendant argues that evidence found during this forensic examination should be suppressed because no U.S. warrant was obtained before the forensic examination was conducted. The Government argues that the Fourth Amendment does not apply to the Singapore Search, because it was conducted at the behest of Cambodian officials. The Court does not believe that either analysis is correct.

The Court credits Agent Phillips' testimony at the October 29 Hearing that the forensic examination was undertaken in order to aid Cambodian officials. Defendant points out that a letter submitted by the U.S. Embassy in Cambodia to Cambodian officials requesting the media does not appear to respond to any request for aid from the CNP. (See First Mot. Ex. G.) However, Agent Phillips states in his declaration that CNP requested assistance in the forensic examination of the computer media. (Phillips Decl. ¶ 15.) He also testified at the October 29 Hearing that the letter was phrased in such a way as to allow Cambodia to "save face" by not mentioning the CNP's need for U.S. aid. (Oct. 29 Hr'g Tr. at 42:15-44.) The Court credits this testimony.

Intending to demonstrate that Cambodian authorities have the capability to perform searches of computer media, Defendant also submits a Cambodian newspaper account which describes the "police" finding a large number of pornographic photographs on a suspect's computer. However, that the "police" – a generic term that could refer to coordinated efforts between Cambodian and foreign police forces – found evidence on a computer does not establish that the Cambodian police force did so without help. Moreover, even if Cambodian officials have some ability to search computer media, they could still request help in conducting the type of forensic analysis performed here.

⁹ The Court does not address Defendant's argument that evidence found pursuant to the May 17, 2007 warrant more than sixty days after issuance of the warrant should be suppressed. Defendant acknowledges that this argument is moot, given that no evidence was obtained from media that were not determined to contain evidence within the sixty-day period. (Reply 11 n.6.)

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However, the Government provides no authority for the proposition that a search by U.S. officials is not subject to the Fourth Amendment where it is provided in support of a foreign investigation. Indeed, the case law regarding joint ventures makes clear that U.S. participation in a foreign investigation can subject that investigation to scrutiny under the Fourth Amendment.

The case law regarding joint ventures also undermines Defendant's argument that any search conducted by U.S. officials must be conducted pursuant to a U.S. warrant, even if conducted at the request of foreign officials. Joint ventures by their nature involve substantial U.S. participation, yet their reasonableness is judged by compliance with foreign law. Barona, 56 F.3d at 1092. Even a foreign search directed by U.S. officials in which information obtained was immediately forwarded to U.S. officials meets Fourth Amendment requirements where local search and seizure law is observed. See id. at 1094-95. Even if such a search is unreasonable under foreign law, evidence obtained in the search is not excluded if the U.S. participants acted in the good faith belief that the search complied with local law. Id. at 1092-93.

There can be little doubt that the Singapore Search was a joint venture, as U.S. officials conducted the entire examination at Cambodian officials' request. The Court must consider, then, whether the search was reasonable under Cambodian law and whether U.S. officials relied in good faith on representations that the search complied with Cambodian law. Id. However, because Defendant has argued only that a U.S. warrant was required, and the Government has argued that the Fourth Amendment is simply inapplicable, neither party has addressed these questions. The Court thus requires additional briefing regarding whether: (1) the Cambodian warrant, which authorized the search of Defendant's home, also authorized the search of computers and computer media contained within it; (2) Defendant's evidence that the warrant was obtained after the Cambodian Search was conducted establishes that the warrant was not valid for the purpose of the Singapore search; and (3) Agent Phillips and other U.S. officials involved in the Singapore search relied in good faith on representations by Cambodian officials that a search of Defendant's computer and computer media complied with Cambodian law.

III. CONCLUSION

For the foregoing reasons, Defendant's Motion To Suppress Evidence Discovered as Result of Computer Media Search Warrant is DENIED. Defendant's Motion To Suppress Evidence is DENIED in part. The parties should submit additional briefing addressing the issues raised by the Court by December 20, 2007.

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IT IS SO ORDERED.

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Case No. CR NO. 07-168 DSF

Date February 7, 2008

Present: The Honorable DALE S. FISCHER, United States District Judge

Interpreter N/A

Paul Pierson

Not Present

Not Present

*Deputy Clerk**Court Reporter**Assistant U.S. Attorney*U.S.A. v. Defendant(s):Present Cust. BondAttorneys for Defendants:PresentApp. Ret.

MICHAEL JOSEPH PEPE

NOT

X

CARLTON F. GUNN

NOT

X

Proceedings:

(In Chambers)

Order DENYING Defendant's Motion To Suppress Evidence

Defendant Michael Joseph Pepe is charged with seven counts of "engaging in illicit sexual conduct in foreign places" in violation of 18 U.S.C. § 2423(c). The First Superseding Indictment alleges that, between September 2005 and June 2006, Defendant traveled to Cambodia and engaged in illicit sexual conduct with seven minors.

On June 26, 2006, Defendant filed a Motion To Suppress Evidence, seeking, among other things, the exclusion of evidence obtained in a forensic examination conducted by United States officials in Singapore (the "Singapore Search"). In an order dated December 5, 2007, the Court found that the Singapore Search had been conducted in order to assist the Cambodian National Police ("CNP") and that any evidence found during the search was admissible if obtained in compliance with Cambodian law. The Court requested further briefing regarding whether: (1) the Cambodian warrant, which authorized the search of Defendant's home, also authorized the search of computers and computer media contained within it; (2) Defendant's evidence that the warrant was obtained after the Cambodian Search was conducted establishes that the warrant was not valid for the purpose of the Singapore search; and (3) Agent Phillips and other United States officials involved in the Singapore search relied in good faith on representations by

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Cambodian officials that a search of Defendant's computer and computer media complied with Cambodian law.

The parties submitted their supplemental briefs on December 20, 2007. Having considered these submissions, and heard testimony, the Court DENIES Defendant's Motion.

I. DISCUSSION

A. Compliance with Cambodian Law is Sufficient To Meet Fourth Amendment Requirements

Despite the concerns raised by Defendant, the Court remains convinced that compliance with Cambodian law is sufficient to meet Fourth Amendment requirements where, as here, the United States government aids in a foreign investigation of a United States citizen for violation of foreign law. In joint venture cases, where United States participation is sufficient to require application of the Fourth Amendment, the reasonableness of the search is measured by compliance with foreign law. This is true even where United States officials direct foreign law enforcement authorities to gather information for the United States officials' use.¹ See United States v. Barona, 56 F.3d 1087, 1094 (9th Cir. 1995). It is also true where a court is "unable to conclude that the role [of United States officials] was subordinate to the role of [foreign] authorities" – as when United States officials engage in a "joint investigation" with foreign law enforcement, participating daily and gathering evidence regarding contraband headed for the United States. See United States v. Peterson, 812 F.2d 486, 490 (9th Cir. 1987). The Court finds the role of United States authorities in the Singapore search to be no more substantial than that of United States authorities in these joint venture cases. Compliance with Cambodian law is sufficient to satisfy the requirements of the Fourth Amendment.

B. The Singapore Search Complied with Cambodian Law

¹ For this reason, that Agent Phillips instructed the forensic examiner in Singapore to make copies of all images from Defendant's computer and computer media for Immigration and Customs Enforcement in Bangkok and the United States Attorney (see Supplemental Mem. of P. & A. in Supp. of Mot. to Suppress Evidence Ex. A) does not mean that the standards of reasonableness applicable to joint ventures do not apply here.

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In his Motion, Defendant points out an apparent defect in the Cambodian warrant that authorized the search of his home in Cambodia. Defendant's house was searched on June 17, 2006.² The warrant, dated June 17, 2006, appeared to be based on a report dated June 19, 2006 that referred to information obtained on June 18, 2006. Thus, it appeared that the warrant was obtained after the search of Defendant's home. In its December 5 Order, the Court also expressed concern that the warrant – which authorized the search of Defendant's house but did not mention computers or computer media – did not authorize the search of computer media found at the house. The Government's supplemental submission addresses both of these concerns.

First, the Government submits the Declaration of Sambo Ly ("Ly Decl."), a native speaker of Khmer who has been interpreting between Khmer and English since 1979, has served as an interpreter for the Superior and Family Courts of the State of California, County of Alameda, and who currently serves as the Director of the Interpreter Services Department for the Alameda County Medical Center. (Ly Decl. ¶ 1.) Ly states that there were several errors in the previous translation of the report supporting the Cambodian warrant, which had been provided by the Government. In the top right corner of the document, the previous translator had translated the date as "19 June 2006," when it should have been "17 June 2006." (*Id.* ¶ 2.) The original translator mistakenly transcribed a date associated with a child victim's information as "18 June 2006," when it should have been "15 June 2006."³ (*Id.*) Also, the

² At the February 6 hearing, Defendant presented two items of evidence meant to establish that the search of Defendant's Cambodian home actually took place on June 16, 2006, not June 17, 2006. First, Defendant submitted a report prepared by Agent Phillips that appears to state that the search took place on June 16, 2006. The Court credits Phillips' testimony, consistent with his earlier testimony, that the date in the report is in error.

Second, Defendant submitted a disk of digital photographs of the search of Defendant's home. The digital photographs were stored as computer files. Associated with these files were "created on" dates. The "created on" date for some of these photographs was June 16, 2006. Without further evidence that the "created on" date on the disk corresponds with the actual date in Cambodia when the picture was taken, the Court finds this evidence insufficient to discredit the testimony of the Government's witnesses that the search took place beginning on June 17, 2006. The Court takes judicial notice that the time in Cambodia is fifteen hours ahead of the time in Los Angeles, raising the possibility that the "created on" date could simply reflect the difference in time zones.

³ This date was written in a combination of arabic numerals and Khmer words. At the February 6, 2008 evidentiary hearing, the original translator, Mr. Madden, testified that the hand-printed arabic numeral was ambiguous in appearance so that it could be either a 15 or an 18. Defendant contends that

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original translator interpreted the number of the document as “450/06,” when it should have been “449/06.” (*Id.*) The residential search warrant contains a statement by the prosecutor that he saw “report number 449/06 R.M.K., dated 17 June 2006.” (Decl. of Gary J. Phillips in Supp. of Opp’n to Mot. to Suppress Evid. and Mot. to Suppress Evid. Discovered as a Result of Computer Search Warrant (“Phillips Decl. I”), Ex. A.) In addition, the original translator correctly interpreted the date by the District Attorney’s signature as “17/6” or June 17. (Ly Decl. ¶ 3.) At the February 6, 2008 evidentiary hearing, the original translator, Mr. Madden, testified that the dates in the original translation were in error, and that it was “unmistakable” that Ms. Ly’s alternative translation was correct. Ms. Ly was also present and cross-examined, and testified that she was certain her translation was correct. The Court is satisfied, based on Ms. Ly’s declaration, as well as the testimony of Ms. Ly and Mr. Madden, that the warrant was obtained prior to the search of Defendant’s home.

Second, the Government submits the Declaration of Koeut Rith (“Koeut Decl.”), the Under Secretary of State, Ministry of Justice of the Kingdom of Cambodia. Mr. Koeut states:

Under Cambodian law, all search warrants authorize the police to search and seize all suspected items inside a suspect’s residence, including computers and computer media, which are considered to relate to the suspect’s case. When the police seize computers or computer media, officers trained in computer technology automatically are allowed to search that computer and computer media for evidence in connection with the crime. The officers may either search the computer and computer media at the search location or remove the computer and media for forensic analysis.

(Koeut Decl. ¶ 2.) “Foreign law, though formerly treated as an issue of fact, is now recognized as an issue of law, to be established by any relevant source, including testimony.” *Peterson*, 812 F.2d at 490; Fed. R. Crim. P. 26.1. Koeut’s declaration establishes that the Singapore Search was authorized by the warrant obtained by the CNP prior to the search of Defendant’s home.

Defendant argues that the Singapore Search violated Cambodian law because it was requested by the police rather than being “authorized by one of the judges of the competent court or by the prosecutor.” (*See* Mot. Ex. I, art. 20 § 2.) However, the prosecutor requested the initial search warrant (*see* Phillips Decl. I, Ex. A), which Koeut’s testimony establishes

it is, in fact, an 18. Having reviewed the Khmer version of the report, the Court concludes the arabic numeral is likely a 15, and the ambiguous numeral is more consistent with other “5”s in the document than other “8”s. In any event, even assuming the numeral is ambiguous in appearance, the Court concludes that a date of June 15, 2006 is more consistent with the other indications in the report that the report was produced on June 17, 2006.

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authorized the search of Defendant's computer and computer media.

Defendant further argues that the Singapore Search was defective because Defendant was not present at the search. "The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure." Rakas v. Illinois, 439 U.S. 128, 131 n.1 (1978). Defendant has not carried his burden of demonstrating that a search of computers or computer media out of his presence would violate Cambodian law. Article 20(1) of the Provisions Dated September 10, 1992 Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period provides that "[s]earches must be conducted in the presence of the suspect and two witnesses, preferably neighbors or owners of the building." Because this provision explicitly refers to search of a building, the Court is not convinced that it imposes a requirement that the suspect be present during the search of computers and computer media seized and removed from his home. Article 20(2) states that "[i]f possible, the search should be completed in the presence of the suspect and two witnesses among the family." (Supplemental Decl. of Koeut Rith ¶ 7.) The statement that a search "should" take place in the presence of the suspect "if possible" is hardly the language of a hard and fast rule. When Mr. Koeut testified at the February 6 hearing, he indicated that there are indeed exceptions to the rule. In addition, given that the necessary equipment for conducting a forensic examination of Defendant's computer and computer media was in Singapore, not Cambodia, it was not possible to have Defendant – who was incarcerated in Cambodia – present for the search.

The Singapore Search complied with Cambodian law.

C. The Singapore Search Was Conducted in Good Faith

Because the Court concludes that the Singapore Search complied with Cambodian law, it need not consider whether the search was carried out in good faith. If it were to reach the issue, the Court would find that the good faith exception applies. Where "foreign law was not complied with, the good faith exception to the exclusionary rule becomes part of the analysis." Barona, 56 F.3d at 1092-93. "The good faith exception is grounded in the realization that the exclusionary rule does not function as a deterrent in cases in which the law enforcement officers acted on a reasonable belief that their conduct was legal." Id. at 1093.

Agent Phillips submits a declaration stating that he has participated in at least seventy investigations in Cambodia since May 2002. (Decl. of Gary J. Phillips in Supp. of Gov't's Submission in Resp. to Ct.'s Order Dated Dec. 5, 2007 ("Phillips Decl.") ¶ 1.) On several occasions, he has observed the CNP seize computers and computer media while searching a home. (Id. ¶ 3.) To his knowledge, no separate warrant or separate showing was necessary to search computers or computer media seized at a home. (Id.)

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CRIMINAL MINUTES - GENERAL

Phillips's testimony at the October 29 hearing establishes that Cambodian officials requested that United States officials search Defendant's computer and computer media. When United States officials sent a letter to Cambodian officials, formally requesting that the computer and computer media be turned over so that it could "be sent to the United States for additional testing," (Mot. Ex. G) the Cambodian government complied. It was not "objectively unreasonable" for Phillips to rely on the implicit assertion that such a search would comply with Cambodian law, see Peterson, 812 F.3d at 492, particularly given his prior observation of Cambodian police officers seizing computers and computer media, apparently without any additional showing or warrant. The Court finds no reason not to credit Phillips' statement that he "believed and continues to believe that the search warrant authorized the seizure and search of [Defendant's] computer and computer media." (Phillips Decl. ¶ 3.)

Agent Phillips acted in the good faith belief that the Singapore Search complied with Cambodian law when he requested that Special Agent David Nguyen-Galante conduct the Singapore Search. Special Agent Nguyen-Galante reasonably believed that Agent Phillips' request was lawful. (See Decl. of David Nguyen-Galante in Opp'n to Mot. To Suppress ¶ 5.) Even if the Singapore Search had not complied with Cambodian law, the evidence uncovered during the search would not be excluded. See Barona, 56 F.3d at 1092-93.

II. CONCLUSION

For the foregoing reasons, the Court DENIES Defendant's Motion to Suppress Evidence obtained in the Singapore Search.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE DALE S. FISCHER
UNITED STATES DISTRICT JUDGE PRESIDING

United States of America,)

Plaintiff,)

)

vs.)

)

Michael Joseph Pepe,)

Defendant.)

)

Case No. CR 07-168-DSF

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Sentencing

Los Angeles, California

Friday , February 28, 2014

Pamela A. Batalo, CSR, FCRR, RMR
Official Reporter
Roybal Federal Building
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Room 181-I
Los Angeles, California 90012
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Los Angeles, California, Friday, February 28, 2014

9:01 a.m.

-oOo-

THE CLERK: Calling Item No. 1, CR 07-168-DSF, *United States of America vs. Michael Pepe*.

MS. DONAHUE: Good mornings, your Honor. Patricia Donahue on behalf of the United States.

MR. BROWN: Good morning, your Honor. Charles Brown on behalf of Mr. Pepe, who is present in custody.

THE COURT: Good morning.

Perhaps we should start with the most recent filing, which I'm not sure I understand, Ms. Donahue, and I'm not sure whether Mr. Brown has had a chance to absorb it.

MS. DONAHUE: Your Honor, in September of 2008, the government submitted restitution information based on the numbers that were available to the two non-government organizations, Hagar and Agape at that time.

The government asked Hagar and Agape to provide updated information, since the circumstances surrounding the different victims, I was going to say have changed, but are different perhaps than what was anticipated in September of 2008 when the government made its initial filing.

The numbers that the government submitted yesterday are the updated information that the government has received from Hagar and Agape. And Hagar's calculations are based

1 specifically on the amounts of money that Hagar spent on caring 00:
2 for the two victims who are in Hagar's care, the girls whose 00:
3 initials are IT and NTD. 00:

4 Agape in 2008, as well as now, did not have the 00:
5 ability to break down specific amounts of money with regard to 00:
6 each girl, so Agape simply took the amount of money that it 00:
7 spent overall at that particular shelter, divided it by the 00:
8 number of girls it had at the shelter, and then multiplied by 00:
9 five, since Agape is caring for five -- the other five victims. 00:

10 Agape did that through 2010. Since 2010, Agape has, 00:
11 in fact, been able to keep track -- 00:

12 THE COURT: Why are you speaking so quickly? 00:

13 MS. DONAHUE: Oh, I'm sorry. I apologize. 00:

14 Since 2010, Agape has been able to keep track 00:
15 specifically of the amount it spent on these five girls as 00:
16 opposed to the division. And that's why Agape's sheet looks the 00:
17 way it did. The numbers are somewhat different from those that 00:
18 the government submitted, obviously, in 2008. 00:

19 THE COURT: That was my question originally, and I'm 00:
20 not sure why this was. And I didn't try to figure it out. 00:

21 Hagar, at least according to the probation department, 00:
22 was entitled to something more than \$116,000, but the 00:
23 government's number that it had previously submitted was 78 00:
24 something. 00:

25 So is this the 35,400 that's in this supplemental 00:

1 filing now the total number?

2 MS. DONAHUE: Yes.

3 THE COURT: Instead of the 78?

4 MS. DONAHUE: Yes. That is correct.

5 THE COURT: So it's been reduced substantially.

6 MS. DONAHUE: Yes.

7 THE COURT: And the number for Agape, which the
8 probation officer didn't have at all, was previously 282,000
9 plus, and now the number is 211,813. Is that the total number
10 for Agape?

11 MS. DONAHUE: Yes, your Honor.

12 THE COURT: Okay.

13 Now, Mr. Brown, have you had an opportunity to look at
14 these figures and think about what position you wanted to take
15 with regard to them?

16 MR. BROWN: Yes, your Honor.

17 Government counsel provided me with a courtesy copy
18 last night, and I simply would just stand by our previous
19 arguments with respect to that, our previous filing, your Honor,
20 and I would submit on that, your Honor.

21 THE COURT: Your previous filing is that under the
22 law, the statute does not allow for money to go to anyone other
23 than presumably the children themselves?

24 MR. BROWN: Yes, your Honor.

25 THE COURT: All right. Well, I agree with the

1 government's position on that issue, and therefore I will be 00:
2 awarding restitution and -- do you have the total number by 00:
3 chance, Ms. Donahue? 00:

4 MS. DONAHUE: I have the total number for Agape and 00:
5 the total number for Hagar. I did not add them together. I 00:
6 apologize, but I will do that. 00:

7 THE COURT: I think it's 247,213. 00:

8 MS. DONAHUE: Your Honor, I believe, yes, the total 00:
9 amount is 247,000 -- \$247,213. 00:

10 THE COURT: All right. 00:

11 This is the time set for sentencing. I have 00:
12 previously held a hearing at which the victims and their 00:
13 representatives were given an opportunity to and did provide 00:
14 information and make statements. I also have written statements 00:
15 from some of them submitted long ago by the government. 00:

16 I have read and considered the presentence report, 00:
17 with a disclosure date of July 30, 2008. And there was also a 00:
18 letter about updated financial information. 00:

19 I have also read and considered the government's 00:
20 sentencing position and submission of victim impact and 00:
21 restitution information; the defendant's position re sentencing 00:
22 factors and exhibits; the government's response to defendant's 00:
23 position re sentencing factors; the defendant's supplemental 00:
24 filing re restitution; the government's response to defendant's 00:
25 supplemental filing; the supplemental factual corrections; and 00:

1 now this supplemental information about restitution. 00:

2 Does the government have any comment on the 00:
3 defendant's most recent statement about the amount of money that 00:
4 will be coming into him? He thinks it will be significantly 00:
5 reduced. 00:

6 MS. DONAHUE: The government does not necessarily 00:
7 believe that is accurate. And the government will take this 00:
8 Court's restitution order and apply it or assist in applying it 00:
9 against whatever assets are available, but the information that 00:
10 the defendant provided, we have no reason to believe that that 00:
11 is correct. 00:

12 THE COURT: And it's on information and belief. I 00:
13 don't -- without telling me what the information is that leads 00:
14 to that belief, it's not terribly helpful. And I haven't -- I 00:
15 don't know if I would have access to information myself to check 00:
16 it, but I certainly haven't attempted to do that. 00:

17 The other factual issues won't impact sentencing. 00:
18 Although I don't have any reason to doubt that Mr. Pepe knows 00:
19 how old he is, I don't think that's terribly relevant. 00:

20 But I am concerned about the financial amount. And in 00:
21 the government's papers some time ago, you asked for writ of 00:
22 garnishment, and I don't remember, frankly, whether you 00:
23 submitted one and I signed it or whether that's something that 00:
24 still needs to be addressed. 00:

25 MS. DONAHUE: Your Honor, I believe -- I must not -- I 00:

1 believe we did not, and my understanding is after the Court
2 imposes a sentence, the government then submits a proposed writ
3 of garnishment. I believe that's the proper procedure.

4 THE COURT: And I haven't done one of those in
5 probably 30 years. So I don't remember whether you have to put
6 in a specific amount. I guess it has the total amount due, and
7 then whoever is responding to it just figures out what has to be
8 deducted and then what goes on to the government.

9 MS. DONAHUE: That is the government's understanding,
10 that we don't have -- we have to specify the total amount due,
11 but not necessarily know the amount of funds that's remaining,
12 although that is something that we will look into.

13 THE COURT: So it may or may not be relevant, whether
14 it's 4,000 or 1,000, whatever it is --

15 MS. DONAHUE: Correct.

16 THE COURT: As far as I'm concerned, every last dime
17 of it that doesn't have a legal priority over these children
18 should go to the children. But I'm sure the Bureau of Prisons
19 or whatever agency this thing will go to will figure that out.

20 MS. DONAHUE: Yes. It's going to go to the Veteran's
21 Administration and to the Bureau of Prisons both.

22 THE COURT: All right.

23 Mr. Brown, have you had enough time to read all the
24 relevant information, including the Presentence Report, and
25 review that with Mr. Pepe?

1 will do what it can to protect the children of other nations 00:
2 from the crimes of American citizens committed abroad. 00:

3 It is important to make clear that the penalty for 00:
4 committing such crimes against even one such victim is likely to 00:
5 be life in prison. 00:

6 I will now state the sentence but the attorneys will 00:
7 have a final chance to make legal objections before sentence is 00:
8 imposed. 00:

9 Does either counsel know of any reason why sentence 00:
10 should not now be imposed? 00:

11 MS. DONAHUE: No, your Honor. 00:

12 MR. BROWN: No, your Honor. 00:

13 THE COURT: I find that the following sentence is 00:
14 reasonable but is no greater than necessary to comply with the 00:
15 purposes stated in 18 United States Code Section 3553(a). 00:

16 It's ordered that the defendant shall pay to the 00:
17 United States a special assessment of \$700, which is due 00:
18 immediately. 00:

19 It is ordered that the defendant shall pay restitution 00:
20 in the total amount of \$247,213 pursuant to 18 United States 00:
21 Code Section 2248. The amount of restitution ordered shall be 00:
22 paid as follows: 00:

23 To Hagar International on behalf of victims IT and 00:
24 NTD, \$35,400; to Agape -- I'm looking for the full name of. 00:

25 MS. DONAHUE: Agape International Missions, 00:

1 your Honor. AIM. 00:

2 THE COURT: Thank you. 00:

3 For victims TC, LK, KS, SS, and SR, and I'm not sure 00:
4 those are the initials we used at the trial. Are they 00:
5 different -- 00:

6 MS. DONAHUE: They are, your Honor. 00:

7 THE COURT: Okay. And that amount is \$211,813. 00:

8 Restitution shall be due during the period of 00:
9 imprisonment at the rate of not less than \$4,000 per month and 00:
10 pursuant to the Bureau of Prisons Inmate Financial 00:
11 Responsibility Program. If any amount of the special 00:
12 assessment -- or, I should say, both the special assessment and 00:
13 restitution shall be due during that period and pursuant to the 00:
14 Bureau of Prisons Inmate Financial Responsibility Program. 00:

15 If any amount of the special assessment or restitution 00:
16 remains unpaid after release from custody, if Mr. Pepe is 00:
17 released from custody, monthly payments of at least \$4,000 shall 00:
18 be made during the period of supervised release. Obviously if 00:
19 Mr. Pepe's income or other payments don't reach that amount, the 00:
20 probation officer will contact the Court and the Court will 00:
21 revisit that amount. 00:

22 These payments shall begin 30 days after the 00:
23 commencement of supervision. 00:

24 If the defendant makes a partial payment, each payee 00:
25 shall receive approximately proportional payment unless another 00:

1 priority order or percentage payment is specified in this

2 judgment. The defendant shall comply with General Order 01-05.

3 All fines are waived as I find that the defendant does
4 not have the ability to pay a fine in addition to restitution.

5 Pursuant to the Sentencing Reform Act of 1984, it's
6 the judgment of the Court that the defendant, Michael Joseph
7 Pepe, is committed on Counts 1 through 7 of the First
8 Superseding Indictment to the custody of the Bureau of Prisons
9 for a term of 210 years. This term consists of 30 years on each
10 of Counts 1 through 7 of the First Superseding Indictment, to be
11 served consecutively.

12 On release from imprisonment, the defendant shall be
13 placed on supervised release for a term of life. This term
14 consists of life on each of Counts 1 to 7, all such terms to run
15 concurrently under the following terms and conditions:

16 One, the defendant shall comply with the rules and
17 regulations of the U.S. Probation Office and General Order 318.

18 Two, during the period of community supervision, the
19 defendant shall pay the special assessment and restitution in
20 accordance with this judgment's orders pertaining to such
21 payment.

22 Three, the defendant shall cooperate in the collection
23 of a DNA sample from the defendant.

24 Four, the defendant shall register with the state sex
25 offender registration agency in any state where the defendant

1 resides, is employed, carries on a vocation, or is a student as 00:
2 directed by the probation officer. The defendant shall provide 00:
3 proof of registration to the probation officer within 30 days of 00:
4 release from imprisonment. 00:

5 Five, the defendant shall participate in a 00:
6 psychological counseling and/or psychiatric treatment and/or sex 00:
7 offender treatment program which may include in-patient 00:
8 treatment as approved and directed by the probation officer. 00:
9 The defendant shall abide by all rules, requirements, and 00:
10 conditions of such program, including submission to risk 00:
11 assessment evaluations and physiological testing such as 00:
12 polygraph and Abel testing. The probation officer shall 00:
13 disclose the presentence report and any previous mental health 00:
14 evaluations or reports to the treatment provider. 00:

15 I don't see a probation office recommendation for the 00:
16 Bureau of Prisons to conduct a mental health evaluation, but 00:
17 that seems to me an appropriate order to make, so I will make 00:
18 that order as well. 00:

19 Six, as directed by the probation officer, the 00:
20 defendant shall pay all or part of the cost of treating the 00:
21 defendant's psychological or psychiatric disorders to the 00:
22 after-care contractor during the period of community supervision 00:
23 pursuant to 18 United States Code Section 3672. The defendant 00:
24 shall provide payment and proof of payment as directed by the 00:
25 probation officer. 00:

1 Seven, the defendant shall not possess any materials,
2 including pictures, photographs, books, writings, drawings,
3 videos or video games depicting and/or describing child
4 pornography as defined in 18 United States Code Section 2256(8),
5 and I think maybe after these terms were written, there was a
6 revision to that to allow the defendant to view images in
7 connection with an appeal.

8 MS. DONAHUE: Yes, your Honor. There is a revision
9 that allows in connection with the preparation of the appeal.

10 THE COURT: So I will add that as well, that exception
11 in connection with preparation of an appeal.

12 Eight, the defendant shall not contact the victims by
13 any means, including in person, by mail or electronic means or
14 via third parties. Further, the defendant shall remain at least
15 100 yards from the victims at all times. If any contact occurs,
16 the defendant shall immediately leave the area of contact and
17 report the contact to the probation officer.

18 Nine, the defendant shall not associate or have
19 verbal, written, telephonic, or electronic communication with
20 any person under the age of 18 except (A) in the presence of the
21 parent or legal guardian of said minor; and (B) on the condition
22 that the defendant notify said parent or legal guardian of his
23 conviction in the instant offense.

24 This provision does not encompass persons under the
25 age of 18 such as waiters, cashiers, ticket vendors, etc., with

1 whom the defendant must deal in order to obtain ordinary and 00:
2 usual commercial services. 00:

3 Ten, the defendant shall not affiliate with, own, 00:
4 control, volunteer or be employed in any capacity by a business 00:
5 or organization that causes him to regularly contact persons 00:
6 under the age of 18. 00:

7 Eleven, the defendant's employment shall be 00:
8 provided -- shall be approved by the probation officer, and any 00:
9 change in employment must be pre-approved by the probation 00:
10 officer. The defendant shall submit the name and address of the 00:
11 proposed employer to the probation officer at least 10 days 00:
12 prior to any scheduled change. 00:

13 Twelve, the defendant shall not reside within direct 00:
14 view of school yards, parks, public swimming pools, playgrounds, 00:
15 youth centers, video arcade facilities or other places primarily 00:
16 used by persons under the age of 18. The defendant's residence 00:
17 shall be approved by the probation officer, and any change in 00:
18 residence must be pre-approved by the probation officer. The 00:
19 defendant shall submit the address of the proposed residence to 00:
20 the probation officer at least 10 days prior to any scheduled 00:
21 move. 00:

22 The drug testing condition mandated by statute is 00:
23 suspended based on the Court's determination that the defendant 00:
24 poses a lows risk of future substance abuse. 00:

25 Defendant is remanded to the custody of the United 00:

1 States Marshal.

2 Other than my advising defendant about his appeal
3 rights, does counsel have anything further?

4 MR. BROWN: Yes, your Honor.

5 With respect to designation, your Honor, I understand
6 that the BOP has several dedicated sex offender management
7 program facilities within the BOP. There is one at Devens,
8 Massachusetts and there is also one, I think, in Englewood,
9 Colorado. We would just ask for a recommendation that Mr. Pepe
10 be designated to such a facility that's dedicated to sex
11 offenders. Given the risk that Mr. Pepe, I think, would face at
12 a non-sex offender USP, your Honor, and because of the need for
13 treatment, your Honor, we would ask for that recommendation.

14 THE COURT: I will make the recommendation that
15 Mr. Pepe be housed at a facility that is either dedicated to sex
16 offenders or has a sex offender management program.

17 Anything else?

18 MR. BROWN: No, your Honor.

19 THE COURT: Ms. Donahue?

20 MS. DONAHUE: The government moves to dismiss the
21 underlying Indictment.

22 THE COURT: That will be dismissed.

23 The Statement of Reasons shall be included in the
24 Commitment Order and Judgment and shall be provided to the
25 Probation Office, the Sentencing Commission, and the Bureau of

1 Prisons. A complete copy of the Presentence Report and any
2 additions, corrections, or changes shall be provided to the
3 Bureau of Prisons and the Sentencing Commission and any copies
4 of the report and related materials shall remain confidential.

5 If an appeal is taken, counsel on appeal shall have
6 access to the report.

7 Sir, you have a right to appeal your conviction and
8 your sentence. With few exceptions, a Notice of Appeal must be
9 filed within 10 days of judgment being entered. Do you
10 understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: If you're unable to afford a transcript of
13 the record in this case, one will be provided at government
14 expense. If you're unable to pay the cost of an appeal or
15 filing fee, you may apply within 10 days for leave to appeal in
16 forma pauperis.

17 If you do not have counsel to act on your behalf and
18 if you request it, the clerk of the court will prepare and file
19 a Notice of Appeal on your behalf. You must make that request
20 within 10 days. The Notice of Appeal must designate the
21 judgment or order appealed from and the fact that you're
22 appealing to the Court of Appeals. It should designate the
23 portion of the proceedings not already on file that you deem
24 necessary for the reporter to include.

25 Anything else?

Certificate of Service

I hereby certify that on May 28, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

By: /s/ James H. Locklin
JAMES H. LOCKLIN
Deputy Federal Public Defender

No. 14-50095

**In the United States Court of Appeals
for the Ninth Circuit**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MICHAEL JOSEPH PEPE,

Defendant-Appellant.

On Appeal from the United States District Court
for the Central District of California

The Honorable Dale S. Fischer, Presiding

No. CR-07-00168-DSF

Appellant's Excerpts of Record
[Volume 2 of 12]

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[†] Although this document and the two orders that follow were not filed until after the judgment and notice of appeal were filed, they are placed here in the excerpts because they relate to the trial proceedings.

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10
11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION
14

15 UNITED STATES OF AMERICA,	}	NO. CR 07-168-DSF
16 Plaintiff,		NOTICE OF MOTION; MOTION TO SUPPRESS EVIDENCE; MEMORANDUM OF POINTS AND AUTHORITIES
17 v.		
18 MICHAEL PEPE,		
19 Defendant.		Hearing Date: July 30, 2007 Hearing Time: 8:30 a.m.

20 _____

21
22 TO: ACTING UNITED STATES ATTORNEY GEORGE CARDONA, AND
23 ASSISTANT UNITED STATES ATTORNEY PATRICIA DONAHUE:
24

25 PLEASE TAKE NOTICE that on July 30, 2007, at 8:30 a.m., defendant,
26 Michael Pepe, will bring on for hearing the following motion:
27
28

MOTION

Defendant, Michael Pepe, through his counsel of record, Deputy Federal Public Defender Carlton F. Gunn and Deputy Federal Public Defender Charles Brown, hereby moves this Honorable Court for an order suppressing all evidence found during (1) searches of defendant's home in Phnom Penh, Cambodia by a combined group of Cambodian and American law enforcement officers during June, 2006 and (2) subsequent searches of defendant's computer and other computer media by American government agents alone at American facilities in Singapore and/or other locations. This motion is made pursuant to the Fourth Amendment to the United States Constitution and is based upon the attached memorandum of points and authorities, all files and records in this case, and such additional argument and evidence as may be presented at the hearing on this motion.

Respectfully submitted,

SEAN K. KENNEDY
Federal Public Defender

DATED: June 25, 2007

By /S/
CARLTON F. GUNN
Deputy Federal Public Defender

DATED: June 25, 2007

By /S/
CHARLES C. BROWN
Deputy Federal Public Defender

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3
4 I.

5 **INTRODUCTION**

6
7 Michael Pepe is charged with four counts of engaging in illicit sexual conduct
8 with a minor in foreign places, in violation of 18 U.S.C. § 2423(c) . Trial is presently
9 set to commence on January 29, 2007. This motion seeks to suppress evidence found
10 in two sets of searches: (1) searches of Mr. Pepe's home by a combined group of
11 Cambodian and American law enforcement officers in Phnom Penh, Cambodia
12 during June, 2006; and (2) subsequent searches of a computer, thumb drive, and
13 digital media card¹ by American government agents alone at American facilities in
14 Singapore and/or other locations.

15
16 II.

17 **STATEMENT OF FACTS**

18
19 Between June 14, 2006 and June 15, 2006, two nongovernmental organizations
20 advocating for abused children in Cambodia provided information to the Bangkok,
21 Thailand office of the United States Bureau of Immigration and Customs
22 Enforcement that a United States citizen who was later identified as Mr. Pepe had
23 sexually abused and raped a number of children at his home in Phnom Penh,
24 Cambodia. See Exhibit A, at 2. American agents interviewed at least one of the
25 alleged victims, conducted additional investigation regarding Mr. Pepe's background,

26
27

¹ A thumb drive is a computer storage device approximately the size of a
28 thumb, which can store much larger amounts of data than a diskette or CD. A digital
camera media card is a computer chip which is inserted in a digital camera and stores
digital images when photographs are taken with the camera.

1 and apparently concluded there was a basis for American charges under 18 U.S.C.
2 § 2423(c). *See id.*

3
4 It also appears that the American agents and/or the nongovernmental
5 organizations contacted Cambodian law enforcement authorities. Those authorities,
6 accompanied by one or more American agents and nongovernmental organization
7 representatives, arrested Mr. Pepe on June 17, 2006, for rape and debauchery. *See*
8 Exhibit A, at 3. Mr. Pepe's home was searched that same day, and then searched
9 again on at least one – and possibly more – occasions during the period from June 17
10 through June 21. *See* Declaration of Michael Pepe, ¶ 2.² Various items of evidence,
11 including physical objects, documents, and two computers and other computer media,
12 including a thumb drive and a digital camera media card, were seized during the
13 searches.

14
15 American agents appear to have been an integral part of the searches,
16 moreover. Initially, it appears that American agents from at least two different
17 agencies – the Diplomatic Security Service and the Bureau of Immigration and
18 Customs Enforcement – were present and participated in the searches. Secondly,
19 many, if not most, of the items of evidence were seized not by Cambodian officers
20 but by the American agents and/or nongovernmental organization representatives
21 who also assisted with the search. *See, e.g.*, Exhibit B, at 3 (report of interview of
22 one of alleged victims referring to cloth rope, which was kept inside closet “which is
23 where AIA Phillips discovered it during the search warrant”). *See also* Declaration of
24 Michael Pepe, ¶ 4. Thirdly, it was an American agent and a nongovernmental
25 organization representative named Ron Dunne who signed as the “1st Witness” and
26

27
28 ² Different reports which have been provided in discovery reflect different
dates.

1 “2nd Witness” on a “Search Record” dated June 21, 2006.³ See Exhibit C.⁴ Finally,
2 all or much of the evidence seized was turned over to the American agents. See
3 Exhibit D (United States Customs Service “Custody Receipt for Seized Property and
4 Evidence”).

5
6 As far as what authority there was for the searches, it is clear that there was no
7 American search warrant. Whether there was a Cambodian search warrant, at least at
8 the time of the first search, is less clear. There is a Cambodian search warrant
9 included in the discovery which is dated June 17, 2006, see Exhibit E, but it appears
10 to have been so dated after the fact. What suggests this is that the “Summary Report”
11 which accompanies the search warrant in the discovery and was prepared “to request
12 a residential search warrant for [Mr. Pepe’s house]” is (1) dated June 19, 2006 and (2)
13 relies on, inter alia, “information from the victim child named [redacted] dated 18
14 June 2006.” Exhibit F.

15
16 In addition to the searches of Mr. Pepe’s home, there were subsequent searches
17 of the computer and computer media that were purely American. On June 20, 2006,
18 the Acting Regional Security Officer Attaché at the United States Embassy in Phnom
19 Penh sent a letter to the Cambodian Police Commissioner General stating: “[A]gents
20 request that they have access to the evidence, specifically, Mr. Pepe’s computer, hard
21 drive, memory stick, and USB thumb drive so that they may be sent to the United
22 States for computer forensic testing.” Exhibit G. This request was granted, and one
23 of the computers, the thumb drive, and the digital camera media card were quickly
24
25
26

27 ³ As discussed *infra* pp. 8-9, this likely violated Cambodian law.

28 ⁴ Exhibits C, E, and F are English translations of Cambodian records provided
by the government in discovery.

1 sent to an American forensic computer analyst in Singapore.⁵ That analyst received
 2 the items on June 30, 2006, and subsequently conducted an extensive forensic
 3 analysis – apparently without any warrant – on June 30, 2006. *See* Exhibit H. *See*
 4 *also* Exhibit A, at 9-11. The examination revealed pornographic and non-
 5 pornographic images of various minors, including minors believed to be the alleged
 6 victims, sometimes with and sometimes without a man “who closely matches Pepe’s
 7 physical description,” and some of which were in a bedroom and/or bathroom
 8 recognized as Mr. Pepe’s. Exhibit A, at 9-11. There were also photos of Mr. Pepe
 9 fully clothed, in which he apparently could be definitely identified. *See* Exhibit A, at
 10 11.

11 12 III.

13 ARGUMENT

14
 15 A. THE SEARCHES OF MR. PEPE’S HOME WERE JOINT VENTURES
 16 BETWEEN FOREIGN AND AMERICAN AUTHORITIES AND SO ALL OF THE
 17 EVIDENCE FOUND IN THE SEARCHES MUST BE SUPPRESSED UNLESS THE
 18 GOVERNMENT SHOWS THE SEARCH WAS REASONABLE UNDER THE
 19 FOURTH AMENDMENT.

20
 21 1. The Fourth Amendment Applies Because the Search Was a Joint
 22 Venture Between the Cambodian and American Officials.

23
 24 Whether the Fourth Amendment applies to foreign officials’ search of an
 25 American citizen’s property in a foreign country depends on the extent of American
 26

27 ⁵ The other computer and additional computer media were not sent to
 28 Singapore. Those items are the subject of a search warrant recently obtained here in
 Los Angeles which may be subject to challenge on other grounds. *See infra* p. 15
 n.10.

1 officials' participation in the search. The leading Ninth Circuit case on the question
2 states the rule as follows:

3 With certain exceptions not applicable here, Fourth Amendment
4 principles do not apply to searches by foreign authorities in their
5 own countries, even if the targets of the search are American.
6 (Citation omitted.) If, however, United States agents'
7 participation in the investigation is so substantial that the action is
8 a joint venture between United States and foreign officials, the law
9 of the foreign country must be consulted at the outset as part of the
10 determination whether or not the search was reasonable.

11 *United States v. Peterson*, 812 F.2d 486, 490 (9th Cir. 1987).

12
13 Here, there is a wealth of evidence that the search was a joint venture between
14 Cambodian and American officials. First, the investigation appears to have been
15 initiated by or at least jointly pursued by American officials investigating a violation
16 of American law. Second, American officials were not only present at, but actively
17 participated in, the search; indeed, they appear to have been more active than the
18 Cambodian officials. *See* Declaration of Michael Pepe, ¶ 4. Third, American
19 officials took possession of all or most of the evidence seized within a few days.
20 Finally, there is corroboration in the fact that the ultimate prosecution of Mr. Pepe is
21 taking place here in the United States, and he was never prosecuted in Cambodia.⁶

22
23 2. The Applicability of the Fourth Amendment Requires that the
24 Government Show the Search Was Reasonable.

25
26 What the Fourth Amendment requires given the fact that the search was a joint
27

28 ⁶ Mr. Pepe was held in custody in Cambodia for seven to eight months, but he
was never prosecuted there.

1 venture is “a determination whether or not the search was reasonable.” *United States*
2 *v. Peterson*, 812 F.2d at 490, *quoted supra* p. 7. But this does not incorporate all of
3 the requirements that the Fourth Amendment places on searches by American
4 officials. This is because the Fourth Amendment is not directed at foreign officials,
5 and what an American court does will not alter the search policies of another
6 sovereign nation. *United States v. Brulay*, 383 F.2d 345, 348 (9th Cir. 1987). Instead
7 of looking to the usual Fourth Amendment rules, “the law of the foreign country must
8 be consulted at the outset as part of the determination.” *Peterson*, 812 F.2d at 490.
9

10 In the present case, this means the government must show – at the very least –
11 that the search comported with Cambodian law. *Cf. United States v. Carbajal*, 956
12 F.2d 924, 930 (9th Cir. 1992) (burden on government to show reasonableness of
13 warrantless search).⁷ And it appears questionable whether the government can do
14 this, for the search appears to have violated Cambodian law in at least two respects.
15

16 First, Cambodian law provides that, except in the case of certain types of
17 offenses which the defense believes are not what was alleged here, searches must be
18 authorized by a judge or a prosecutor. The warrant which has been provided in the
19 discovery here, while dated June 17, 2006, appears to have been actually issued on
20 some later date, for it is based on a report that is dated June 19, 2006 and refers to
21 information obtained on June 18, 2006. *See supra* p. 5.
22

23 Second, there is a special provision in Cambodian law requiring that a search
24 “must be conducted in the presence of the suspect and two witnesses, preferably
25

26 ⁷ While the burden is normally on the defense when there was a search
27 warrant, and there may have been a Cambodian search warrant at some point here, the
28 existence of a foreign warrant which does not satisfy Fourth Amendment
requirements seems insufficient to shift the burden on the question of important
Fourth Amendment constitutional rights. *See generally* 6 Wayne R. LaFave, *Search*
and Seizure 43-45 (4th ed. 2004).

1 neighbors or owners of the building.” Exhibit I, at 20, § 1.⁸ Yet the witnesses who
2 signed the “Search Record” for at least one search were neither neighbors nor owners
3 of the building, but an American agent and a nongovernmental organization
4 representative who were intimately involved in both the searches and the
5 investigation that led up to it. *See supra* pp. 3-5.

6
7 B. THE EVIDENCE FOUND IN THE SEARCH OF MR. PEPE’S COMPUTER,
8 THUMB DRIVE, AND DIGITAL CAMERA MEDIA CARD MUST BE
9 SUPPRESSED BECAUSE THOSE SEARCHES WERE CONDUCTED SOLELY
10 BY AMERICAN OFFICIALS AND THAT MADE THE FOURTH
11 AMENDMENT’S SEARCH WARRANT REQUIREMENT APPLICABLE.

12
13 The searches of the computer, thumb drive, and digital camera media card
14 differ from the searches of Mr. Pepe’s home in that they were conducted solely by
15 American officials. This eliminates one of the main concerns underlying the focus on
16 compliance with foreign law in the joint venture foreign search cases – that the
17 Fourth Amendment is not directed at foreign officials and cannot alter their conduct,
18 *see supra* p. 8. Applying the ordinary requirements of the Fourth Amendment – such
19 as the existence of probable cause and the use of warrants – to searches conducted
20 solely by American officials poses no such problem. It is one thing to say that our
21 courts will not expect foreign officials to comply with American law rather than the
22 foreign officials’ own law; it is another thing to say that even American officials
23 acting alone may ignore American law.

24
25 The fact that the American officials chose to conduct the search of the
26 computer, thumb drive, and digital camera media card in another country should not
27

28 ⁸ Alternatively, the witnesses may be family members. *See* Exhibit I, art. 20, §
2.

1 affect the applicability of the Fourth Amendment or its scope, moreover. As
2 explained in *United States v. Conroy*, 589 F.2d 1258 (5th Cir. 1979):

3 The Fourth Amendment not only protects all within our bounds; it
4 also shelters our citizens wherever they may be in the world from
5 unreasonable searches by our own government. (Citations
6 omitted.) The mere consent of foreign authorities to a seizure that
7 would be unconstitutional in the United States does not dissipate
8 its illegality even though the search would be valid under local
9 law.

10 *Id.* at 1264-65. *See also United States v. Streifel*, 665 F.2d 414, 419-20 n.8 (2nd Cir.
11 1981) (rejecting government argument that Fourth Amendment does not apply to
12 search of vessel on high seas); *United States v. Saylor*, 374 F.2d 894, 900 (Ct. Cl.
13 1967) (holding Fourth Amendment applied to civilian living in residential compound
14 under control of American military abroad); *Powell v. Zuckert*, 366 F.2d 634, 639-40
15 (D.C. Cir. 1966) (applying Fourth Amendment prohibition of general warrants to
16 search of Air Force employee's off-base private dwelling by American agents in
17 Japan); *United States v. Best*, 184 F.2d 131, 138 (1st Cir. 1950) (“[W]e assume, and
18 we think it is probably so, that the protection of the Fourth Amendment extends to
19 United States citizens in foreign countries under occupation by our armed forces.”).

20
21 *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990), the most recent
22 Supreme Court case dealing with foreign searches, does not undercut the cases just
23 cited, moreover. *Verdugo-Urquidez* dealt with application of the Fourth Amendment
24 to searches by American agents in foreign countries of nonresident aliens. *See id.* at
25 261. And the holding in *Verdugo-Urquidez* turned on that status, for the Court held
26 that the Fourth Amendment did not apply to nonresident aliens in foreign countries
27 because the Fourth Amendment grants protections to only “the people” and “the
28 people” means American citizens and other people living in the United States. *See id.*

1 at 265-66 (quoting U.S. Const. amend. IV).

2
3 At least two district courts after *Verdugo-Urquidez* have followed the *Conroy*
4 and/or *Powell* cases cited *supra*. First, then District, now Circuit, Judge Paez – in
5 *Colello v. S.E.C.*, 908 F. Supp. 738 (C.D. Cal. 1995) – wrote:

6 The Government’s first argument – that by placing their
7 assets abroad, plaintiffs (U.S. citizens) are not entitled to the full
8 panoply of Constitutional rights – was rejected long ago. The Bill
9 of Rights unquestionably protects a citizen or his property from
10 incursions by the U.S. government regardless of location. In *Reid*
11 *v. Covert*, 354 U.S. 1, 77 S. Ct. 1222, 1 L. Ed. 2d 1148 (1957), the
12 Supreme Court explained:

13 At the beginning, we reject the idea that when the
14 United States acts against citizens abroad it can do so
15 free of the Bill of Rights. The United States is
16 entirely a creature of the Constitution. Its power and
17 authority have no other source. It can act only in
18 accordance with all the limitations imposed by the
19 Constitution. When the Government reaches out to
20 punish a citizen who is abroad, the shield which the
21 Bill of Rights and other parts of the Constitution
22 provide to protect his life and liberty should not be
23 stripped away just because he happens to be in
24 another land. This is not a novel concept. To the
25 contrary, it is as old as government. It was
26 recognized long before Paul successfully invoked his
27 right as a Roman citizen to be tried in strict
28 accordance with Roman law.

354 U.S. at 5-6, 77 S. Ct. at 1225. *See also, Rosado v. Civiletti*, 621 F.2d 1179, 1189 (2nd Cir.), *cert. denied*, 449 U.S. 856, 101 S. Ct. 153, 66 L. Ed. 2d, 70 (1980); *United States v. Conroy*, 589 F.2d 1258, 1264 (5th Cir.), *cert. denied*, 444 U.S. 831, 100 S. Ct. 60, 62 L. Ed. 2d, 40 (1979); *Powell v. Zuckert*, 366 F.2d 634, 640 (D.C. Cir. 1966).

Colello, 908 F. Supp. at 753-54. Similarly, another district judge followed *Conroy* in 2001, writing: “[I]t is not determinative that [the agent’s] seizure [of defendant’s property] took place inside a United States Embassy. ‘The Fourth Amendment not only protects all within our bounds; it also shelters our citizens wherever they may be in the world from unreasonable searches and seizures by our own government.’” *United States v. Wharton*, 153 F. Supp. 2d 878, 881-82 (W.D. La. 2001) (quoting *Conroy*, 589 F.2d at 1264).

Some judges have suggested in dicta that the warrant requirement of the Fourth Amendment may not apply overseas, at least in some circumstances, *see, e.g., United States v. Barona*, 56 F.3d 1087, 1092 n.1 (9th Cir. 1995); *see also United States v. Bin Laden*, 126 F. Supp. 2d 264, 276-77 (S.D.N.Y. 2000),⁹ but that suggestion should

⁹ The majority opinion in *Barona* reads *Verdugo-Urquidez* as resolving the issue, *see Barona*, 56 F.3d at 1092 n.1, but the dissenting opinion in *Verdugo-Urquidez* cited *Conroy* and pointed out that “nothing in the Court’s opinion questions the validity of the rule, accepted by every Court of Appeals to have considered the question, that the Fourth Amendment applies to searches conducted by the United States Government against United States citizens abroad” and that “[a] warrantless unreasonable search and seizure is no less a violation of the Fourth Amendment because it occurs in Mexicali, Mexico, rather than Calexico, California.” *Verdugo-Urquidez*, 494 U.S. at 283 n.7 (Brennan, J., dissenting). Other commentators have also recognized that *Verdugo-Urquidez* is not dispositive. *See Comment, The Need for Warrants Authorizing Foreign Intelligence Searches of American Citizens Abroad: A Call for Formalism*, 69 U. Chi. L. Rev. 403, 405 n.17 (2002) (concluding that “Supreme Court case law, while ambiguous, suggests that the warrant requirement could be generally applicable” and “[g]iven the heavily fractured nature of the Court, the precedential status of *Verdugo* is unclear”); advisory committee note to proposed 1990 amendment to Federal Rule of Criminal Procedure 41, *reprinted in* 129 F.R.D. 557, 581-82 (1990) (noting that “[s]ome searches and seizures by federal officers outside the territory of the United States may be governed by the Fourth Amendment” and that “[a]lthough the amendment rests on the assumption that the

1 be rejected for several reasons, at least in the circumstances of this case. First, one of
2 the reasons given – that there is no express statutory authority for issuance of a
3 warrant to search property in a foreign country, *see Bin Laden*, 126 F. Supp. 2d at
4 275-76 – (a) may rest on a false premise and (b) cannot override the Constitution even
5 if the underlying premise is not false. As explained in *United States v. Wharton*,
6 *supra*:

7 Certainly, the rights guaranteed by the Fourth Amendment
8 cannot be abrogated because Congress has failed to enable the
9 federal courts to enforce those very rights. Indeed, some argue
10 that United States District Courts have a common law right to
11 issue warrants even when statutory authorization is lacking.
12 *Wharton*, 153 F. Supp. 2d at 882. *See also United States v. Best*, 184 F.2d at 138
13 (“Obviously, Congress may not nullify the guarantees of the Fourth Amendment by
14 the simple expedient of not empowering any judicial officer to act on an application
15 for a warrant.”); *Bin Laden*, 126 F. Supp. 2d at 276-77 n.16 (collecting cases
16 suggesting possible inherent power to issue search warrants under Fourth
17 Amendment).

18
19 Second, in the present case, the only reason the evidence was in a foreign
20 country was because American officials chose to send the evidence to Singapore
21 instead of the United States. Indeed, according to the letter requesting the evidence,
22 the agents originally intended to send the evidence to the United States, *see Exhibit*
23 *G*, and that is where another computer and other computer media, *see supra* p. 6 n.5,

24
25 _____
26 Constitution applies to some extraterritorial searches, *cf. United States v. Verdugo-*
27 *Urquidez*, 110 S. Ct. ----, --- U.S. ---- (1990) (Fourth Amendment inapplicable to
28 extraterritorial searches of property owned by nonresident aliens), it does not address
the question of when the Constitution requires a warrant”). And the view of Judge
Paez – who wrote his opinion in *Colello v. S.E.C.* after *Barona* and is now also sitting
on the Ninth Circuit – appears more consistent with the view that the warrant
requirement does apply to American agents’ searches of American citizens in foreign
countries.

1 in fact were sent. If there was concern about how to get a warrant to conduct the
2 search in Singapore, the agents could have sent all of Mr. Pepe's computers and
3 computer media to Los Angeles, or some other American location. *Cf. United States*
4 *v. Wharton*, 153 F. Supp. 2d at 882-83 (holding agent acted reasonably when he
5 returned defendant's property to the United States, where a search warrant was later
6 issued pursuant to Rule 41 of Federal Rules of Criminal Procedure). To let American
7 officials avoid the warrant requirement when they *could* have conducted a search in
8 the United States but *chose* to conduct the search in a foreign country would allow
9 the grossest manipulation of Fourth Amendment requirements.

10
11 Third, the search here apparently took place on American-controlled premises
12 where there is likely American jurisdiction under the "special maritime and territorial
13 jurisdiction of the United States" provision of 18 U.S.C. § 7. That provision extends
14 jurisdiction over substantive crimes "where American citizens and property need
15 protection, yet no other government effectively safeguards those interests." *United*
16 *States v. Corey*, 232 F.3d 1166, 1171 (9th Cir. 2000). These same reasons suggest
17 extension of American constitutional protections, especially when the conduct at
18 issue is that of solely American agents in support of an American investigation and
19 subsequent prosecution.

20
21 In sum, the Fourth Amendment's warrant requirement must apply to a search
22 like the computer search in the present case, whether or not it applies in all
23 circumstances. The agents' failure to get a warrant before searching the computer,
24 the thumb drive, and the digital camera media card made the search of those items
25 unlawful.

IV.

CONCLUSION

The searches of Mr. Pepe's home in June, 2006 were a joint venture between the Cambodian and American agents, and so the government must show that those searches were reasonable under the Fourth Amendment, at least in the sense of complying with Cambodian law. The subsequent searches of the computer, the thumb drive, and the digital camera media card were unlawful because they were conducted by American agents alone without a warrant, and that violates the Fourth Amendment regardless of where the American agents conducted the searches. The Court should suppress the evidence found in these searches as well as any fruits.¹⁰

Respectfully submitted,

SEAN K. KENNEDY
Federal Public Defender

DATED: June 25, 2007

By /S/
CARLTON F. GUNN
Deputy Federal Public Defender

DATED: June 25, 2007

By /S/
CHARLES C. BROWN
Deputy Federal Public Defender

¹⁰ Two additional search warrants have been disclosed in recently provided additional discovery which are based on affidavits that contain detailed summaries of the evidence found in the search of the computer, thumb drive, and digital camera media card which is challenged in this motion. Because the warrants are based on this evidence, it would appear that any evidence found in the searches conducted pursuant to the warrants would be a fruit of the searches challenged in this motion. There appear to be other bases for challenging these recently disclosed search warrants, however, so the defense will address all of the issues in a separate motion if and when the government discloses evidence found in those searches that it intends to use at trial.

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/S/
MICHAEL PEPE

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U.S. Const. amend. IV..... 11

OTHER

Wayne R. LaFave, *Search and Seizure* (4th ed. 2004)..... 8Comment, *The Need for Warrants Authorizing Foreign Intelligence Searches of
American Citizens Abroad: A Call for Formalism*,
69 U. Chi. L. Rev. 403 (2002). 12

EXHIBIT A

U.S. Department of Homeland Security
751 Daily Drive, Suite #210
Camarillo, CA 93010



**U.S. Immigration
and Customs
Enforcement**

February 14, 2007

OX07QR06BK0008

The Honorable George Cardona
United States Attorney
Central District of California
312 North Spring Street
Los Angeles, California 90012

ATTN: Patricia Donahue
Assistant United States Attorney, Terrorism and Organized Crime Section

Dear Sir:

Under the provisions of law, there is a reported herein violation of the laws of the United States of America committed within the jurisdiction of the Central District of California involving the illicit sexual conduct of a U.S. citizen in a foreign place as defined by Title 18, United States Code, Section 2423(c).

VIOLATOR INFORMATION

Subject Name: Michael Joseph PEPE ("PEPE")
Date of Birth: [REDACTED] 1953
California DL #: E0383375
Address: [REDACTED], Oxnard, California
Sex: Male
Citizenship: U.S. (A copy of PEPE's birth certificate is attached as **Exhibit "A"**)
SSN: [REDACTED]
Criminal History: None known

VIOLATIONS OF LAWS

18 USC 2423(c) Engaging in Illicit Sexual Conduct in Foreign Places

00001

Pepe ER 62

SYNOPSIS

In June 2006, two Non-Governmental Organizations provided information to the Bangkok, Thailand Office of the Attaché, U.S. Immigration and Customs Enforcement (ICE), that a U.S. citizen, later identified as MICHAEL JOSEPH PEPE ("PEPE"), had sexually abused and raped a number of children at his compound in Phnom Penh, Cambodia. During the course of the investigation, Assistant ICE Attaché ("AIA") Gary Phillips interviewed four of the child victims (between the ages of 9 and 12 years-old) who all identified PEPE as the individual who sexually abused them. Based upon their investigation, the Cambodian National Police ("CNP") arrested PEPE and executed search warrants at PEPE's compound in Phnom Penh, where evidence of PEPE's sexual abuse of his child victims was seized. A copy of CNP reports regarding their investigation is attached as **Exhibit "B."**

Between June 14 and 15, 2006, two Non-Governmental Organizations, the International Justice Mission ("IJM") and World Hope International ("WHI"), provided information to ICE Bangkok that a U.S. citizen, later identified as PEPE had sexually abused minor females, ranging in age from 10-18 years-old. A copy of the IJM report is attached as **Exhibit "C."** The following is a summary of the information provided:

I.T. is an 11-12 year-old Vietnamese girl, who stated that she had "sex" with an American known as "Michael."

I.T. was able to help the IJM identify PEPE's compound located at Street 596, House #83, Tol Kork, Phnom Pehn, Cambodia. Subsequently, the IJM was able to identify PEPE as the resident of Street 596, House #83, Tol Kork, Phnom Pehn, Cambodia. Further, the IJM provided PEPE's date of birth, September 20, 1953, and his U.S. Passport number, 200451801.

On or about June 12, 2006, WHI interviewed I.T., who stated that PEPE had sex with her approximately 10 times and that there were other young girls being sexually abused by PEPE.

A medical examination of I.T. conducted at Phnom Penh Municipal Referral Hospital revealed injuries to her vagina.

When contacted by the IJM, PEPE's neighbors confirmed that there were a number of young girls living with him.

On June 16, 2006, AIA Phillips and U.S. Embassy Investigator Suos Vansak interviewed I.T. I.T. is approximately 4'04" tall, 60 pounds, and has brown eyes and black hair. The interview was conducted through interpreters, as I.T. does not speak English. A copy of this recorded interview is located within the [REDACTED], "Interview 1" folder of **Exhibit "D."** The following is a summary of the interview:

I.T.

I.T. stated that a woman known as "Basang," later identified as SANG THI CHHOEURN ("SANG"), took her to PEPE's Phnom Penh compound.

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Upon arriving at PEPE's compound, I.T. stated that PEPE provided SANG with a white capsule, which SANG then forced her to ingest. This capsule caused I.T. to become groggy and, subsequently, PEPE undressed, bound (wrists and legs), gagged, blindfolded, and raped her.

During that rape, I.T. recalled that she was crying and in pain, that PEPE had used his hands to spread her legs and insert his penis into her vagina for approximately one hour, and that PEPE did not use a condom during the sexual abuse.

On or about May 26, 2006, I.T. stated that she was called up to PEPE's bedroom where he helped undress her and instructed her to take a shower. After showering, PEPE instructed I.T. to lie on his bed where he proceeded to rape her "for a long time."

I.T. described how she and other naked girls gave PEPE massages together. During the massages, I.T. stated the other girls took turns providing oral sex to PEPE, for which he would pay each girl \$1 for the massage and \$5 to the girl that caused him to ejaculate through oral sex.

I.T. stated that there were a total of five girls living at PEPE's compound, believed to be between 9 and 15 years old.

Prior to being raped by PEPE in late-May 2006, I.T. stated that SANG and her husband brought I.T. to PEPE's compound, where I.T. would provide PEPE with massages where he would ejaculate and PEPE would pay I.T. approximately \$5.

On June 16, 2006, U.S. Department of State, Diplomatic Security Service ("DSS") SA Andrew Simpson provided AIA Phillips with information from PEPE's registration application. A registration application is completed by U.S. Citizens traveling/residing abroad and submitted to the U.S. Embassy so that officials can contact the U.S. citizens in emergency situations. A copy of the application is attached as **Exhibit "E."** The following is a summary of the information:

On April 26, 2003, PEPE signed a registration application listing his date of birth, [REDACTED] 1953; place of birth, Boston, Massachusetts; social security number, [REDACTED], his U.S. Passport number, and his email address.

PEPE listed his emergency contacts as his father, Joseph Pepe, in Oxnard, California, and his sister, Elaine Williams in Port Hueneme, California.

PEPE listed that he first traveled to Cambodia on March 10, 2003.

On June 17, 2006, after PEPE left his Phnom Penh compound at Street 596, House #83, Tol Kork, Phnom Pehn, Cambodia, the CNP arrested PEPE for rape and debauchery. Later, on June 17, 2006 and June 19, 2006, while accompanied by ICE Bangkok, the DSS, and the two Non-Governmental Organizations, the CNP executed search warrant(s) at PEPE's compound in Phnom Penh. Copies of the videos of the search warrant(s) are attached as **Exhibit "F."** A copy of the evidence log of items seized from PEPE's compound and received by ICE SA Wang, on November 16, 2006, is attached as **Exhibit "G."** The following is a summary of the items that were seized:

Ropes and pieces of cloth tied in slipknots.

Viagra, KY Jelly, condoms, and unknown white pills.

Children's books, stuffed animals, games, and children's clothes.
Newspaper articles regarding pedophiles and a map cover entitled, "Sex With Children is a Crime."

Pornographic photographs, a computer, emails, and digital media containing suspected child pornography. Subsequently, ICE Bangkok forwarded the computer hard drive and some of the digital media seized to ICE Singapore, where SA Galante performed a forensic examination of the evidence. Copies of the forensics reports are attached as **Exhibit "H."**

PEPE's California driver's license and a copy of PEPE's passport.

On June 18, 2006, AIA Gary Phillips and DSS SA Andrew Simpson interviewed SANG, aka "Basang," who was arrested by the CNP for assisting PEPE in procuring children. The interview was conducted through interpreters, as SANG does not speak English. The following is a summary of the interview:

Approximately 5 years ago, SANG stated that she met PEPE at Sharkey Bar in Phnom Penh, where she works as a prostitute.

SANG stated that she has had sex with PEPE many times in exchange for payment.

SANG admitted that she worked for PEPE as a translator and provided young girls to him.

In or around April of 2006, SANG admitted to brokering the sale of I.T. to PEPE for a \$200 payment to I.T.'s mother. Further, SANG claimed that she received only \$5 commission for brokering I.T.'s sale.

SANG stated that I.T. was a virgin and was sold to PEPE so that he could have sex with her.

SANG stated that PEPE was unhappy with I.T. because she was very small and always crying, and that he was unable to fully penetrate her during sex.

SANG recalled that I.T. frequently screamed because she was very young, scared, and in pain. Further, SANG admitted that she gave I.T. a sedative at PEPE's direction.

SANG admitted that, in or around February of 2006, she brokered the \$300 sale of L.K. to PEPE, for which she was compensated \$10.

SANG admitted that she brought at least 4 other young girls (ages 9, 10, 12, and 16 years old) to PEPE.

SANG stated that PEPE paid the girls' families an "upfront fee" and monthly stipend in exchange for unlimited access to the girls for sexual gratification.

SANG stated that PEPE frequently visited Kilo-11, which is an area well known for the selling and prostitution of children to locals and foreigners.

On June 19, 2006, AIA Phillips and Investigator Suos Vansak re-interviewed I.T., an 11-12 year-old girl that PEPE had allegedly sexually abused. During this interview, I.T. again accurately described PEPE's compound and some of his personal possessions; identified PEPE from a photograph of five men; identified the rope that PEPE used to bind her; and identified L.K., S.R., and S.S. from photographs. A copy of this recorded interview is located within the "INYI", "Interview 2" folder of Exhibit "D."

On June 19 and 20, 2006, AIA Phillips and Investigator Suos Vansak interviewed L.K., an 11 year-old Cambodian girl that PEPE had allegedly sexually abused. Previously, on June 17, 2006, L.K. was given a medical examination at the Phnom Penh Municipal Referral Hospital, where forensic/biological (DNA) evidence was taken. The interview was conducted through interpreters, as L.K. does not speak English. L.K. is approximately 4'06" tall, 60-70 pounds, and has brown eyes and black hair. A copy of this recorded interview is located within the "[REDACTED]" folder of Exhibit "D." The following is a summary of the interview:

L.K.

L.K. stated that SANG brought her and several other children to PEPE's compound.

L.K. stated that since living at PEPE's compound, she had been raped over 20 times by PEPE. Each time she was raped, PEPE gave L.K. \$1.

L.K. stated that PEPE drugged, bound with eggshell-colored cloth, gagged, beat, and raped her. During one sexual assault, PEPE beat L.K. until she lost consciousness.

L.K. recalled observing PEPE's penis and a red "pea" size mark on his inner leg, which she believed to be his left inner leg.

After PEPE raped her, L.K. recalled laying in a lot of blood and experiencing pain in her vagina.

L.K. stated that she was forced to perform oral sex on PEPE over 40 times and that PEPE performed oral sex on her many times.

L.K. stated that PEPE had her view pornographic movies depicting adults performing oral sex.

L.K. stated that she and PEPE took showers together, where he also molested and photographed her naked.

L.K. stated that she was present when two other young girls, S.R. and S.S., performed massages and oral sex on PEPE.

Prior to living at PEPE's compound, L.K. stated that she was a virgin.

L.K. accurately described PEPE's compound and some of his personal possessions; identified PEPE from a photograph of five men; identified SANG from a photograph; and identified the eggshell-colored pieces of cloth that PEPE used to bind her.

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On June 20, 2006, AIA Phillips and Investigator Suos Vansak interviewed S.R., a 9-10 year-old Cambodian girl that PEPE had allegedly sexually abused. The interview was conducted through interpreters, as S.R. does not speak English. S.R. is approximately 4'03" tall, 60 pounds, and has brown eyes and black hair. A copy of this recorded interview is located within the [REDACTED] folder of Exhibit "I." The following is a summary of the interview:

S.R.

In or around March 2006, S.R. stated that SANG brought her and her sister, S.S., to PEPE's compound.

S.R. stated that SANG taught her and S.S. how to perform oral sex. More specifically, SANG instructed them to undress and go to PEPE's bedroom, where they watched SANG perform oral sex on PEPE.

S.R. stated that she performed massages and oral sex approximately 30 times on PEPE, for which she was paid \$1 each time.

S.R. stated that PEPE often kissed her, touched her vagina with his fingers, and performed oral sex on her – which caused her pain.

S.R. stated that a naked PEPE and her slept together in PEPE's bedroom.

S.R. stated that PEPE mainly had sex with L.K.

S.R. stated that, according to SANG, PEPE was planning to have sex soon with her and her sister, S.S.

S.R. stated that PEPE had a red, pea-size mark on his left inner leg.

S.R. accurately described PEPE's compound and some of his personal possessions; identified PEPE from a photograph of five men; identified SANG from a photograph; and identified I.T., L.K., and S.S. from photographs.

On June 21, 2006, AIA Phillips and Investigator Suos Vansak interviewed S.S., a 10-11 year-old Cambodian girl that PEPE had allegedly sexually abused. The interview was conducted through interpreters, as S.S. does not speak English. S.S. is approximately 4'06" tall, 60 pounds, and has brown eyes and black hair. A copy of this recorded interview is located within the [REDACTED] folder of Exhibit "I." The following is a summary of the interview:

S.S.

S.S. stated that SANG taught her how to perform oral sex. More specifically, SANG and PEPE were both naked as she taught S.S.

S.S. stated that she performed oral sex many times on PEPE, for which PEPE paid her approximately \$1 each time. S.S. also stated that she had sexual contact with PEPE between 60 and 90 times.

S.S. stated that, on occasion, PEPE bound her wrists and ankles to his bed while he performed oral sex on her.

After sexual contact with PEPE, S.S. stated that she and PEPE showered together.

S.S. stated that PEPE had a red, pea-sized mark on his left inner leg.

S.S. stated that, in PEPE's workroom, she saw pictures of "small girls like me" naked and bound. Further, S.S. stated that some of the photographs might have been of "foreign girls," approximately 12-13 years of age.

S.S. accurately described PEPE's compound and some of his personal possessions; identified PEPE from a photograph of five men; identified SANG from a photograph; identified the rope that PEPE bound her; and identified I.T. from a photograph.

On June 21, 2006, AIA Phillips and WHI arranged for the medical examination of PEPE's four child victims (I.T., L.K., S.R., and S.S.) at SOS International in Phnom Penh, including taking tests for sexually transmitted diseases and collecting forensic/biological (DNA) evidence. Dr. Laura Watson was the attending physician. Copies of Dr. Watson's medical examinations are attached as **Exhibit "J."** The following is a summary of her findings:

I.T. had an obviously disrupted hymen with small vaginal tear and bruising to the vaginal opening. Dr. Watson's impression was that I.T.'s "healing vaginal injury consistent with forced penetration, pubertal stage consistent with stated age."

L.K. had no hymen visible. Dr. Watson's impression was that L.K.'s "pubertal stage consistent with stated age. Vaginal examination consistent with repeated penetration over time."

Both S.R. and S.S. had no apparent injuries and their pubertal stages were consistent with their stated ages.

On July 6 and 7, 2006, AIA Phillips and Investigator Suos Vansak met with PEPE at Prey Sar Prison in Phnom Penh, Cambodia, where he was held pending Cambodian charges. The following is a summary of the meeting:

PEPE provided his date of birth, September 20, 1953; his place of birth, Boston, Massachusetts; and his social security number, 562-98-2544.

PEPE provided his addresses, 3327 South E Street, Oxnard, California and Street 596, House 83, Phnom Penh.

PEPE claimed that he was currently unemployed and a retired United States Marine Corps Captain.

AIA Philips described PEPE as a white male, 5'10" tall, 240 pounds, blue eyes, and black and silver hair with multiple scarring on his forehead, a birthmark on his right hand, and a pea-sized mole on his left inner thigh/groin region – matching the mole described by three of PEPE's child victims.

After receiving the Miranda warning, PEPE did not want to give a statement and invoked. The meeting was subsequently terminated.

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On July 7, 2006, SA Wang was assigned to further investigate PEPE and his activities involving the international travel to engage sexual acts with minors and the production/distribution/possession of child pornography. Subsequently, SA Wang reviewed the Reports of Investigation prepared by AIA Phillips, which are attached as **Exhibit "K."**

On July 7, SA Wang conducted checks for PEPE through California motor vehicle databases. In addition, SA Wang conducted a record check for PEPE through Accurant. Accurant is a web-based search engine that searches public and proprietary records for identity verification information, corporate information, real property records and deed records. It also includes address history, social security numbers, and other identifying information. Copies of these record checks are attached as **Exhibit "L."** The following is a summary of the information:

According to the California Department of Motor Vehicles database, PEPE has a valid California diver's license and, since September 25, 2002, PEPE has used [REDACTED] Oxnard, California 93033 as his residential address.

According to Accurant, as of May 2006, PEPE's address was [REDACTED], Oxnard, California 93033.

On July 10, 2006, DSS SA Jeffrey Kraus provided SA Wang with a copy of PEPE's last application for a U.S. Passport, which he signed on April 9, 1999. On this U.S. passport application, PEPE listed his date of birth, [REDACTED], 1953, and place of birth, Boston, Massachusetts. A copy of PEPE's passport application is attached as **Exhibit "M."**

On July 20, 2006, U.S. Customs and Border Protection ("CBP") Officer Tim Kirkham checked for PEPE's most recent travel details through the CBP computer systems that query passenger, reservation, and travel itinerary information from all international flights that depart from, arrive at, or transit through the U.S. According to CBP computer systems, on September 1, 2005, PEPE departed Los Angeles International Airport for Manila, Philippines. On September 3, 2005, PEPE departed Manila, Philippines for Phnom Penh, Cambodia by way of Bangkok, Thailand. A copy of the PEPE's travel itinerary is attached as **Exhibit "N."**

Subsequent information provided by Philippine Airlines to SA Wang confirmed that, on September 1, 2005, PEPE departed Los Angeles International Airport for Manila, Philippines aboard Flight 103 and, on September 3, 2005, PEPE departed Manila, Philippines for Bangkok, Thailand aboard Flight 730. Bangkok Airways also confirmed to SA Wang that, on September 3, 2005, PEPE departed Bangkok, Thailand for Phnom Penh, Cambodia aboard Flight 926. A copy of PEPE's September 2005 travel reservation/flight itineraries from Philippine Airlines is attached as **Exhibit "O."** A copy of PEPE's September 2005 travel reservation/flight itineraries from Bangkok Airways is attached as **Exhibit "P."**

On July 21, 2006, SA Wang reviewed some of the computer information and images contained within a thumb drive that was seized during the June 2006 search warrant executed at PEPE's Phnom Penh compound. A thumb drive is a small, portable external data storage device. Copies of these images were placed on a DVD by ICE Senior Special Agent ("SSA") Timothy Sullivan and SA Wang in a digital folder labeled "JetFlash 256 Thumbdrive". The DVD is attached as **Exhibit "Q."** The following is a summary of the review:

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A folder labeled, "Girls 2," contained a set of 13 images of a young Asian girl ("JANE DOE 1"), approximately 15-17 years old, in PEPE's bedroom at his Phnom Penh compound. JANE DOE 1 was photographed undressing, lying naked, and posing in a sexually explicit manner on PEPE's bed. There were also three images of a young Asian girl ("JANE DOE 2"), approximately 6-8 years old, undressing and showering naked in PEPE's bathroom.

A folder labeled, "GIRLS 3," contained a set of 35 images of JANE DOE 1 and JANE DOE 2 in PEPE's bedroom at his Phnom Penh compound. JANE DOE 1 and JANE DOE 2 were photographed undressing, lying naked, posing in a sexually explicit manner on PEPE's bed, and showering in PEPE's bathroom.

A folder labeled, "GIRLS 4," contained a set of 15 images of JANE DOE 2 in PEPE's bedroom at his Phnom Penh compound. JANE DOE 2 was photographed lying naked and posing in a sexually explicit manner on PEPE's bed.

A folder labeled, "Home girls 0705," contained a set of 19 images of a young Asian girl ("JANE DOE 3"), approximately 10-13 years old, in PEPE's bedroom at his Phnom Penh compound. JANE DOE 3 was photographed undressing, lying naked, and posing in a sexually explicit manner on PEPE's bed.

A folder labeled, "SPIDER," contained a set of 83 images of a young Asian girl ("JANE DOE 4"), approximately 10-13 years old, in PEPE's bedroom at his Phnom Penh compound. JANE DOE 4 was photographed undressing, lying naked, and posing in a sexually explicit manner on PEPE's bed.

A folder labeled, "Friend 111111," contained a set of 11 images of a young Asian girl ("JANE DOE 5"), approximately 5-8 years old, topless, undressing, changing outfits, naked, and posing for the photographs.

On July 21, 2006, SA Wang reviewed some of the computer information and images previously seized from PEPE's computer, during the June 17, 2006 search warrant executed at his Phnom Penh compound. Copies of these images can be found in the "Misc" folder of Exhibit "Q." The following is a summary of the review:

The computer had folders that contained hundreds of suspected child pornography images depicting young children, approximately 7-16 years old, dressed in lingerie, undressing, naked, and posing in a sexually explicit manner. Further, many of the suspected child pornography images were kept in separate folders, labeled with the children's names, containing a series or set of images of the same young child.

A folder labeled, "Little 1," contained 13 viewable images of JANE DOE 2 in PEPE's bedroom at his Phnom Penh compound. JANE DOE 2 was photographed lying naked, posing in a sexually explicit manner on PEPE's bed, and showering in PEPE's bathroom. Further, five of the viewable images were of JANE DOE 2 performing oral sex, on PEPE's bed, upon a naked male who closely matches PEPE's physical description.

There were 80 separately labeled folders containing hundreds of thumbnail images. A thumbnail image is a small, low-resolution version of a larger image used for quick identification. PEPE's computer was being used as a virtual library of his images. Copies of

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these images can be found in the "PSD Image Database", "cache", "albums" folder of Exhibit "Q." Among those 80 folders are the following:

"19_Girls 2," contained the thumbnail image set of the images found in the "Girls 2" folder of PEPE's thumb-drive. JANE DOE 1 was photographed undressing, lying naked, and posing in a sexually explicit manner on PEPE's bed. There were also three thumbnail images of JANE DOE 2 undressing and showering naked in PEPE's bathroom.

"20_GIRLS 3," contained the thumbnail image set of the images found in the "GIRLS 3" folder of PEPE's thumb-drive. JANE DOE 1 and JANE DOE 2 were photographed undressing, lying naked, posing in a sexually explicit manner on PEPE's bed, and showering in PEPE's bathroom. There was also a thumbnail image of PEPE in this folder.

"21_GIRLS 4," contained the thumbnail image set of the images found in the "GIRLS 4" folder of PEPE's thumb-drive. JANE DOE 2 was photographed lying naked and posing in a sexually explicit manner on PEPE's bed.

"23_Little 1," contained the thumbnail image set of the images found in the "Little 1" folder. "23_Little 1" was a set of 43 thumbnail images of JANE DOE 2 in PEPE's bedroom at his Phnom Penh compound. JANE DOE 2 was photographed lying naked, posing in a sexually explicit manner on PEPE's bed, and showering in PEPE's bathroom. Further, 13 of the thumbnail images were of JANE DOE 2 performing oral sex, on PEPE's bed, upon a naked male who closely matches PEPE's physical description.

"26_Ni 102905," contained a set of 44 thumbnail images of a young Asian girl ("JANE DOE 6"), approximately 10-13 years old, in PEPE's bedroom at his Phnom Penh compound. JANE DOE 6 was photographed undressing, lying naked, and posing in a sexually explicit manner on PEPE's bed. Further, three of the thumbnail images were of JANE DOE 6 naked with her wrists bound to PEPE's bed.

"27_Ni 2," contained a set 79 thumbnail images of JANE DOE 6 in PEPE's bedroom at his Phnom Penh compound. JANE DOE 6 was photographed undressing, lying naked, and posing in a sexually explicit manner on PEPE's bed. Several of the thumbnail images showed a naked JANE DOE 6 with her wrists bound to her ankles and her exposed buttocks in the air. There were also several of the thumbnail images, which depicted JANE DOE 6 performing oral sex, on PEPE's bed, upon a naked male who closely matches PEPE's physical description.

"28_Hen 1," contained a set of 52 thumbnail images of JANE DOE 4. JANE DOE 4 was photographed undressing, lying naked, and posing in a sexually explicit manner on a bed.

"29_Hem 2," contained a set of 83 thumbnail images of JANE DOE 4 in PEPE's bedroom at his Phnom Penh compound. JANE DOE 4 was photographed undressing, lying naked, and posing in a sexually explicit manner on PEPE's bed.

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"31_Nap & Kia 1," contained a set of 17 thumbnail images of two young Asian Girls ("JANE DOE 7" and "JANE DOE 8"), approximately 10-13 years old, in PEPE's bedroom at his Phnom Pehn compound. JANE DOE 7 and JANE DOE 8 were photographed undressing, lying naked, posing in a sexually explicit manner on PEPE's bed, and showering in PEPE's bathroom.

"32_Nap & Kia 2," contained a set of 24 thumbnail images of JANE DOE 7 and JANE DOE 8 in PEPE's bedroom at his Phnom Penh compound. JANE DOE 7 and JANE DOE 8 were photographed undressing, lying naked, posing in a sexually explicit manner on PEPE's bed, and showering in PEPE's bathroom. Further, within this set, there were some thumbnail images of a fully clothed PEPE posing with a fully clothed JANE DOE 7 and JANE DOE 8, respectively. Also, included in this set were four thumbnail images of a naked PEPE posing with a naked JANE DOE 7 and JANE DOE 8, respectively.

"33_Kia," contained 72 thumbnails of JANE DOE 7. JANE DOE 7 was photographed undressing, lying naked, and posing in a sexually explicit manner on a bed.

There were several photographs of PEPE's four alleged child victims: I.T., L.K., S.S., and S.R. The girls were photographed around PEPE's Phnom Penh compound, playing and posing in different outfits.

During the week of August 21, 2006, ICE SSA Taekuk Cho received information that WHI was sheltering a 14-year old girl who was allegedly sexually exploited by PEPE. Subsequently, on August 25, 2006, SSA Taekuk Cho and DSS Investigator Suos Vansak interviewed the 14-year old girl, T.C. The interview was conducted through interpreters, as T.C. does not speak English. T.C. is approximately 4'06" tall, 77 pounds, and has brown eyes and brownish-black hair. A copy of the Report of Investigation detailing the interview is attached as **Exhibit "R."** The following is a summary of the interview:

T.C. stated that she stayed at PEPE's Phnom Penh house for a one or two week time period during April or May 2006.

T.C. stated that, initially, SANG approached T.C.'s mother about selling T.C.'s virginity to a foreigner. After the initial refusal, SANG returned and convinced T.C.'s mother to allow her to live with a foreigner to attend school.

T.C. stated that approximately one week after SANG brought her to PEPE's house, PEPE bound and raped her. Specifically, T.C. stated that PEPE provided her with a soft drink, which she drank. After drinking the soft drink, T.C. felt very drowsy and could not keep her eyes open. T.C. stated that PEPE used thick, white-colored rope to tie and spread her arms and legs to the bed. Drifting in and out of consciousness, T.C. noticed that she was not wearing pants or underwear and that there was a lot of blood on the bed that came from her vagina. T.C. stated that she had a headache and experienced intense pain in her vagina.

T.C. stated that PEPE raped her four times during the second week at PEPE's house. T.C. stated that PEPE would undress himself, instruct T.C. to undress herself, had T.C. lay on his bed, and force himself upon her.

Prior to each time he raped her, T.C. stated that PEPE would take a blue-colored capsule medication.

T.C. stated that PEPE paid her \$1 each time that he raped her.

T.C. stated that PEPE also forced her to perform oral sex on him and performed oral sex on her. Further, T.C. stated that SANG instructed her and other girls (L.K., S.S., and S.R.) about oral sex by performing oral sex on PEPE in front of them.

Prior to living with PEPE, T.C. stated that she was a virgin.

T.C. stated that there were three other girls living at PEPE's house: L.K., S.S., and S.R. In addition, T.C. was able to identify PEPE, PEPE's Phnom Penh residence, PEPE's bedroom, and the rope that PEPE used to bind her from photographs shown to her.

On September 12, 2006, one of PEPE's sisters provided SA Carlos Ortiz and SA Wang with dozens of emails and letters received from PEPE while he was incarcerated in Cambodia that mostly detailed his requests and health. Also, included was a letter, written by PEPE and contained within an envelope postmarked August 15, 2006 that detailed some of PEPE's actions in Cambodia. A copy of this letter is attached as **Exhibit "S."** Copies of the rest of PEPE's letters and notes are attached as **Exhibit "T."** The following is a summary of this letter:

PEPE mentioned several of his child victims by name, including one for which PEPE had dozens of pornographic and sexually-explicit photographs on his computer.

PEPE stated that his daily routine usually included a massage from the girls after they returned from school and another later in the evening. Further, PEPE stated these massages led to "inappropriate touching, etc."

PEPE stated that on one occasion, after he was given Viagra, PEPE bound a known child victim and slapped her in the face. PEPE explained that the known child victim was given to him by her mother as a wife/girlfriend and described both his "sex drive" and "willpower" as "very low."

PEPE admitted taking naked pictures, at SANG's request, of her two nieces. Further, PEPE claimed that he erased these files from his computer.

During the week of September 25, 2006, SSA Taekuk Cho received information that WHI was sheltering a 13-year old girl who was allegedly sexually exploited by PEPE. Subsequently, on September 27, 2006, SSA Taekuk Cho and DSS Investigator Suos Vansak interviewed the 13-year old girl, K.S. The interview was conducted through interpreters, as K.S. does not speak English. K.S. is approximately 5'0" tall and 85 pounds. A copy of the Report of Investigation detailing the interview is attached as **Exhibit "U."** The following is a summary of the interview:

Prior to living at WHI, K.S. stated that she had previously lived in Thailand; Phnom Penh, Cambodia; and Sihanoukville, Cambodia. K.S. stated that she moved from Phnom Penh to Sihanoukville because her aunt, "Ny," had brought her there. "Ny" is the wife of TERRY SMITH ("SMITH"). In September 2006, the CNP arrested SMITH for child sex crimes.

Subsequently, on October 14, 2006, SMITH was returned to the U.S. based upon an Oregon arrest warrant for child sodomy.

K.S. stated that SANG introduced her to PEPE several months ago and that she lived at PEPE's Phnom Penh home for approximately one and a half months, where K.S. had to clean PEPE's house and sleep with him.

K.S. stated that PEPE forced her to have intercourse with him and perform oral sex on him. Specifically, PEPE grabbed her head, pulled her head towards his penis, and forced her to place her mouth over his penis. Further, K.S. stated that PEPE paid her \$1 for every time he had sex with her and other girls.

K.S. stated that PEPE had also beaten her when she refused to provide him sexual services.

Prior to having sex with PEPE, K.S. stated that she was virgin.

K.S. stated that PEPE also forced her to shower with him and took photographs of her clothed and unclothed.

K.S. stated that there were three other girls living at PEPE's house: L.K., S.S., and S.R. In addition, K.S. was able to identify PEPE, PEPE's Phnom Penh residence, and PEPE's bedroom.

On February 7, 2007, PEPE was expelled from Cambodia and accompanied to Los Angeles, California by ICE SA Henry Casillas, SA Kevin McLaughlin, and SA Wang. Prior to departing, at approximately 7:17 pm (local time), with SA McLaughlin witnessing, SA Wang provided PEPE with his Miranda warning, to which he invoked his right to remain silent.

EXHIBITS (See sections of accompanying folder)

- Exhibit A PEPE's birth certificate
- Exhibit B CNP reports regarding their investigation into PEPE
- Exhibit C IJM's initial report regarding I.T. and PEPE
- Exhibit D Interviews of I.T. and L.K.
- Exhibit E PEPE's registration application with the U.S. Embassy in Cambodia
- Exhibit F Videos of the Search Warrant(s) execution at PEPE's Phnom Penh, Cambodia compound
- Exhibit G Evidence Log of Items Seized from PEPE's compound
- Exhibit H SA Galante's forensics reports regarding his examination of PEPE's computer hard drive and media storage

Exhibit I Interviews with S.R. and S.S.

Exhibit J June 21, 2006 Medical examinations of I.T., L.K., S.R., and S.S. at SOS International

Exhibit K ICE Bangkok's Reports of Investigation

Exhibit L Record checks conducted for PEPE

Exhibit M PEPE's April 9, 1999 U.S. Passport application

Exhibit N PEPE's travel itinerary information provided by CBP

Exhibit O PEPE's travel itinerary/passenger information provided by Philippine Airlines

Exhibit P PEPE's travel itinerary/passenger information provided by Bangkok Airways

Exhibit Q Images retrieved from PEPE's computer hard drive and media storage

Exhibit R Report of Investigation detailing T.C. interview

Exhibit S PEPE's letter admitting the "inappropriate touching" of young girls

Exhibit T PEPE's letters sent to his family

Exhibit U Report of Investigation detailing T.C. interview

WITNESSES – GRAND JURY

Eddy Wang, Special Agent
Ventura Office of the Resident Agent-in-Charge
U.S. Immigration & Customs Enforcement
770 Paseo Camarillo, Suite 320
Camarillo, California 93010

WITNESSES – TRIAL

Gary Phillips, Assistant ICE Attaché
Bangkok, Thailand Office of the ICE Attaché

David Galante, ICE Representative
Singapore Office of the ICE Attache

Timothy Sullivan, Senior Special Agent
Ventura Office of the Resident Agent-in-Charge

Case 2:07-cr-00168-DSF Document 21-2 Filed 06/26/2007 Page 16 of 59
Sang Thi Chhoeum aka "Basang", PEPE's child procurer

Six (6) child victims (I.T., L.K., S.S., S.R., T.C., and K.S.)

Dr. Laura Watson, SOS Attending Physician

Maureen O'Hara, PEPE's sister

WITNESSES – TESTIMONY

Wang Case agent. Conducted investigation in the U.S.; wrote arrest warrant affidavit; conducted one of PEPE's interview; and, reviewed suspected child pornography images.

Phillips Case agent for investigation into PEPE in Cambodia. Assisted in search warrant; interviewed victims; interviewed BASANG; and interviewed PEPE

Galante Conducted forensic analysis of PEPE's computer hard drive and media storage device. Generated the forensic report.

Sullivan Assisted in the creation of Exhibits included in this report.

Sang Procured child victims for PEPE.

Victims Provided statements regarding their sexual abuse by PEPE.

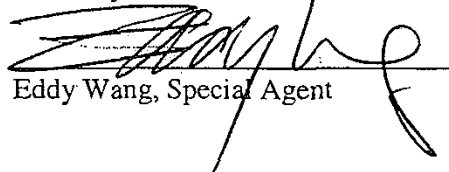
Watson Provided medical examinations of I.T., L.K., S.S., and S.R.

O'Hara Provided SA Wang with letters written by PEPE in Cambodia.

CONCLUSION

Based on the evidence referenced in this report, it is the undersigned's belief that this investigation has served to indicate that PEPE has committed acts which violate federal law as it relates to engaging in illicit sexual conduct, as set forth in Title 18, Sections 2423(c) of the United States Code.

Sincerely,


Eddy Wang, Special Agent

Case 2:07-cr-00168-DSF Document 21-2 Filed 06/26/2007 Page 17 of 59
Approved



DAVID C. WALES
Resident Agent-in-Charge
Ventura, California
U.S. Immigration & Customs Enforcement

Enclosures: Exhibits

EXHIBIT B

DEPARTMENT OF HOMELAND SECURITY ICE	PAGE 1
R E P O R T O F I N V E S T I G A T I O N C O N T I N U A T I O N	CASE NUMBER BK07QR06BK0006
	REPORT NUMBER: 009

On June 14, 2006, ICE Bangkok, the Cambodian National Police (CNP), the Diplomatic Security Service (DSS), and two NGO's, the International Justice Mission (IJM) and World Hope International (WHI), initiated an investigation into the alleged activities of Michael Joseph PEPE. PEPE is being investigated for allegations of child rape and child exploitation.

On June 15, 2006, ICE Bangkok was informed that on June 12, 2006, WHI received information from a 12-year-old Vietnamese girl, known as [REDACTED] [REDACTED] informed that she was raped in the home of an American man, known only as Michael. Assistant ICE Attache (AIA) Gary Phillips later identified Michael as Michael Joseph PEPE, Street 596, House # 83, Tol Kork, Phnom Penh, Cambodia and U.S. address listed as 3327 South E Street, Oxnard, California. I

On June 16, 2006, at approximately 1019 hours, AIA Phillips and Investigator (INV) Suos Vansak interviewed 12-year-old Inyi Tram. [REDACTED] informed that she was raped and sexually exploited by "Michael" (PEPE).

On June 19, 2006, ICE Bangkok interviewed another one of PEPE's child victims identified as [REDACTED] (11 years old). [REDACTED] said that she was repeatedly raped by PEPE and she was also forced to give him oral sex as well as massages. LR

On June 20, 2006, at approximately 1541 hours, AIA Phillips and INV Vansak interviewed [REDACTED] (referred to as [REDACTED]). [REDACTED] said that she did not remember when she was born (except in the year of the Cow, which corresponds to 1997), and she is 10 years old. Per the Chinese lunar year, [REDACTED] would be about 9 years old if she was born in the year of the cow (ox). [REDACTED] was born in Samaki Village, Cambodia to Youeng Lang (mother) and Nin LNU (father). SR
[REDACTED] mother and father are married and live in [REDACTED]. Smey is approximately 4'03" tall, 60 pounds, and has brown eyes and black hair. Her father works as a bicycle repairman and moto taxi driver and her mother sells coffee. Prior to living with PEPE, [REDACTED] resided in Samaki Village with her parents and siblings. Smey identified her brothers as [REDACTED] (7), [REDACTED] (10) and her sister as [REDACTED] (11). SS

SR [REDACTED] said that she was attending school when she was living with PEPE; she attended Newton Thilay School from about 0700 hours to 1000 hours. She was learning to speak English and was capable of saying very basic English phrases. [REDACTED] informed that Newton Thilay School is located far away from PEPE's house, somewhere in Tol Kork, Phnom Penh. [REDACTED] stated that she likes to dance and sing but she does not like playing games. She does not have many friends in or outside of school; her friends were identified as the other girls living in PEPE's house: [REDACTED], Vy and [REDACTED]. KL SS

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O F F I C I A L U S E O N L Y

DEPARTMENT OF HOMELAND SECURITY ICE	PAGE 2
REPORT OF INVESTIGATION CONTINUATION	CASE NUMBER BK07QR06BK0003
	REPORT NUMBER: 009

SR [REDACTED] described Michael (PEPE) as fat, with a big belly, about 5'10" tall, has a fat face with a strawberry nose, white skin, a little bit of hair on his arms, minimal chest hair (if any), he sometimes wore glasses, has black and white hair that is parted on the side, brown eyes (actually they are blue), clean shaven, is a heavy smoker, has bad breath, is dirty, and "sometime he is very angry and crazy." [REDACTED] also said that PEPE has a red mole/mark the size of a pea on his left inner leg (near his groin area). She said that PEPE also drives a white vehicle, does not know where he works, has a Cambodian girlfriend, has a wife, and is from the United States. AIA Phillips showed [REDACTED] a photograph of five men in a picture, which she immediately identified PEPE.

Per personal observations made by AIA Phillips, this is a very accurate description of PEPE.

KL [REDACTED] said that several people live in the house with PEPE. She identified the people as the cook, the gate opener (a boy), [REDACTED] (her sister), Vy, [REDACTED], herself and Michael (PEPE). Another person that frequents the house and appeared to be employed by PEPE was "Basang." Basang is a Vietnamese woman described as having very long hair that she routinely clipped, is skinny and smoked Hero cigarettes.

SR [REDACTED] Basang was fully identified as Sang Thi Chhouern (28 or 29 years of age) and was also arrested by the CNP for acting in the capacity of a child procurer. [REDACTED] said that she met Basang about 2-3 months ago (March 2006) when she approached her and offered her free education if she lived in the house with PEPE. Basang told [REDACTED] that PEPE would send her to school. Basang then spoke with [REDACTED] mother and offered her an opportunity for her [REDACTED] to go to school. Furthermore, [REDACTED] would be taken care of in that she would be given a place to live and she would have food to eat. [REDACTED] mother agreed to the offer and authorized Basang to take [REDACTED] to PEPE's house. [REDACTED] said that she was present when Basang and her mother agreed to let her live in PEPE's house; however, she did not believe she had knowledge of what was going on in the house (the sexual abuse).

[REDACTED] described Michael's house as large and had two floors. The bottom level had a storage area where there is a pool table and study materials for students. Inside the house are chairs, a T.V., photographs in a cabinet, the furniture is made of wood, and there is a wooden carved fish in the living area. There is a bedroom downstairs where the cook and Vy sleep.

[REDACTED] said that the entrance to the upstairs is up a stairwell that leads to Michael's room (located on the right) and her room and a massage room (located to the left). [REDACTED] said that she has been in Michael's room before and she described it as having a mirror, a small cabinet near his bed, a bed with

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O F F I C I A L U S E O N L Y

DEPARTMENT OF HOMELAND SECURITY ICE	PAGE 3
REPORT OF INVESTIGATION CONTINUATION	CASE NUMBER BK07QR06BK0008
	REPORT NUMBER: 009

KL carved flowers in the headboard and a cabinet and a 3-tier closet. Located in the closet was a rope that was used to tie the hands and legs of some of the girls that PEPE had sex with. [REDACTED] said that one of the girls that PEPE tied up was [REDACTED] she knows this because [REDACTED] told her about being tied up by Michael (PEPE). [REDACTED] said that PEPE's room also had a bathroom that has a toilet, sink, shower and a pillar.

SR [REDACTED] described the massage room as having a massage table, which was used for giving Michael (PEPE) massages. [REDACTED] informed that four girls gave Michael SR, SS massages at one time: [REDACTED] Vy, [REDACTED] and [REDACTED]. All four girls took KL turns providing PEPE with oral sex. When asked if she knew what oral sex was, SR [REDACTED] said, "eating penis." When the girls gave PEPE a massage, he was typically naked with the exception of a towel that might have covered parts of his body. AIA Phillips asked [REDACTED] how many times did she participate in giving PEPE massages. She responded and stated more than 30 times. Each time she participated in providing him with a massage, she received \$1, which she eventually gave to her mother. In addition to receiving \$1 for massages and oral sex, she also received a monthly salary of \$30.

[REDACTED] said that on occasion, PEPE watched pornographic videos and would call up one of the girls for sex. Mainly, PEPE called on [REDACTED] to have sex with and very often he called on all of the girls for massages. KL

SR [REDACTED] described her bedroom as being located to the left of the massage room. She stated that she had a bed that had carved flowers, a closet, a bathroom, had photographs on the wall, had a T.V., a VCD player, stuffed toys, such as a rabbit and a tiger.

AIA Phillips asked [REDACTED] if there were any other rooms on the upper level of the house, which she responded "Michael's workroom." Located in the workroom were a computer, CD's, documents, sex movies, Basang's photograph and many photographs of girls inside his computer.

AIA Phillips showed [REDACTED] several photographs of items she described above. She identified the following items: PEPE's house, his white vehicle, the cook, PEPE's bedroom and his closet, the computer workroom, the massage table, the fishpond downstairs, the cloth rope, and the yellow bag (containing another type of rope). SS

KL When asked about the cloth rope, [REDACTED] said that her sister ([REDACTED] or [REDACTED], she refers to both as her sister) told her that he used the rope to tie her up. [REDACTED] informed that sometimes when she was cleaning PEPE's bedroom, she saw the cloth rope on the bed in the morning. [REDACTED] also said that the cloth rope was kept in the inside bottom of the closet (which is where AIA Phillips discovered it during the search warrant). Additionally, [REDACTED] said

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DEPARTMENT OF HOMELAND SECURITY ICE	PAGE 4
R E P O R T O F I N V E S T I G A T I O N C O N T I N U A T I O N	CASE NUMBER BK07QR06BK0008
	REPORT NUMBER: 009

that she knew that there was another type of rope that was in a yellow bag because she opened it up and looked in it. [REDACTED] claimed that she did not know what purpose PEPE used the rope that she saw in the yellow bag.

AIA Phillips also showed [REDACTED] photographs of other individuals that she might have been associated with, or known. [REDACTED] identified the following individuals: Basang, Inyi Tram, herself, [REDACTED], Vy, [REDACTED] and "Uncle Lucky."

According to [REDACTED], when she and her sister [REDACTED] moved in with PEPE, Basang led them to his house, per earlier agreements with their mother. The very night that the sisters [REDACTED] and [REDACTED] arrived at PEPE's house, Basang immediately taught them how to perform oral sex on PEPE. [REDACTED] stated that Basang instructed them to go to PEPE's bedroom, undress and watch how she performed oral sex on PEPE. She said that Michael was lying on his bed, naked (and looked like a bear) and Basang was also naked.

[REDACTED] described Basang as skinny, small breasts, no hair on her body with the exception on her pubic area. Basang licked PEPE's penis, which she described as being straight, circumcised and he had a red mark/mole on his leg. Basang taught the sisters "how to eat penis and use their hands." Basang further showed them how to lick his penis from the top to the bottom, then put their hands on his penis and put it in their mouth. [REDACTED] said that she observed a white, watery liquid come out of PEPE's penis, which "taste bad." [REDACTED] said a lot came out and it took 5, 10 or 60 minutes sometimes.

[REDACTED] said again that she received \$1 for providing him with massages and oral sex. Furthermore, she informed that she was involved in this type of activity on about 30 occasions. [REDACTED] said in addition to providing PEPE oral sex and massages, he also touched her (touched her vagina with his fingers), hugged her and kissed (sucked) her mouth, which happened often. [REDACTED] said that she felt very bad about what PEPE did to her. [REDACTED] stated that she slept with him in his bedroom, but he never slept with her in her bedroom. When PEPE and [REDACTED] slept together in his bedroom, she slept with her clothes on and PEPE was naked. [REDACTED] said that on occasion, [REDACTED] also slept with PEPE.

[REDACTED] said that PEPE never inserted any foreign objects into her body; however, he did have sex with some of the other girls, such as [REDACTED] and Vy. [REDACTED] defined sex as "boom boom." She claimed that PEPE never had "boom boom" with her or her sister, [REDACTED]. However, per a conversation with Basang, [REDACTED] said that she (Basang) was informed by PEPE that they would start having sex with PEPE in about two months (August 2006). However, Basang wanted them to "grow a little more" before having sex with PEPE. [REDACTED] said that she and [REDACTED] were scared when Basang told them about PEPE's plans, they planned to run away before he had sex with him.

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DEPARTMENT OF HOMELAND SECURITY ICE	PAGE 5
R E P O R T O F I N V E S T I G A T I O N C O N T I N U A T I O N	CASE NUMBER BK07QR06BK0008
	REPORT NUMBER: 009

SR [REDACTED] said that she did not recall PEPE taking any sexually explicit photographs or video of children or other people. She did recall that he took photographs of her with her clothes on.

SR KL AIA Phillips asked [REDACTED] if PEPE ever tied her up with the cloth rope she described earlier. [REDACTED] said that she was never tied up; however, [REDACTED] and [REDACTED] were tied up. When asked about PEPE tying up [REDACTED], she said she had knowledge because she told her what PEPE did to her. When she was tied up, PEPE gave her oral sex by licking her vagina. AIA Phillips asked [REDACTED] if PEPE did this to her, which she said that he did many times but he never tied her up. PEPE always had oral sex with [REDACTED] in his bedroom. She claimed, "every time I ate his penis, he ate my vagina." [REDACTED] said that when PEPE did this to her she was in pain. When PEPE tied [REDACTED] up, he had sex with her, "boom boom." SR SR KL

SR [REDACTED] said that she never saw or witnessed PEPE wearing a condom. Furthermore, when she was giving or receiving oral sex, or providing him with a massage, PEPE touched her all over her body. PEPE touched her with his hands and fingers, licked her vagina and kissed her all over her body, from her "breast to toes." PEPE did use a type of cream, liquid or ointment prior to receiving a massage/oral sex. [REDACTED] described the liquid that was used on his penis, which was contained in a pink bottle. AIA Phillips showed [REDACTED] a photograph of the maids' room (which had a pink bottle on the headboard). [REDACTED] identified the pink bottle on the headboard, which was baby oil, as the same liquid that was applied to his body. SS

SR [REDACTED] said that prior to meeting Michael (PEPE), she and her sister [REDACTED] were virgins.

SR [REDACTED] stated that she would testify in the United States concerning what PEPE did to her.

The interview was videotaped and is being retained for evidentiary purposes.

The interview was concluded at approximately 1800 hours.

Investigation will continue.

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EXHIBIT C

Kingdom of Cambodia
Nation Religion King

Ministry of the Interior
General Commissariat of the National Police
Central Department of the Justice Police
Department of Human Trafficking
Prevention and Protection of Minors

Search Record

Objective: provide a search record for the materials of Michael Joseph involving a case of torture and rape of children and debauchery

At: The Department of Human Trafficking Prevention and Protection of Minors, year two thousand and six. Month: June Day: twenty one Time: fifteen hours and zero minutes. We: Police Colonel Sun Ro, Justice Police Officer; position: Vice President of the Department of Human Trafficking Prevention and Protection of Minors; Police Major Hin Sopha, position: Bureau Officer; Police Captain Rin Saroeun, recorder; Mr. Huot Chhuor, representative of the district attorney of the Phnom Penh Municipal Court.

Executed legitimately under the orders of: of District Attorney Nget Sarat, District Attorney of the Phnom Penh Court.

[thumb print]
Michael J. Pepe
June 21, 2006

Assisted by: Huot Chhuor, Clerk of the District Attorney.

Participants: 1. Mr. Gary J. Phillips, [illegible] Assistant[sic] + Attaché
2. Suos Van Sak, US Embassy Phnom Penh
3. Ron Dune, [sic] Director of [illegible] (IJM)

[Signature]
Huot Chhuor

4. Michael Joseph, material owner

We traveled to the residence of: material of Michael Joseph
At House number: 83 Road number 596 Group Subdistrict
Boeng Kak II District Tuol Kork
City or Province Phnom Penh

-There we did a search of the house in the presence of: materially searched in the presence of the owner named Michael Joseph.

-In that search we found and confiscated Material Exhibits, including: 1. white sheet; 2. red towels; 3. short [illegible] 4. short purple [illegible] pants; 4. *Bau* [illegible] medicine, 10 pills; 5. 14 white pills; 6. *Kam* [illegible] medicine, 1 pill; 7. yellow medicine + [illegible] 1 pill [illegible] 200 pills; 8. [illegible] documents, approximately [illegible]; 9. cloth for tying the victims + rope for tying the victims; 10. bloody cloth; 11. the drug *Cammit*, 48 pills; 12. some drugs in a white bag. 13. disks [i.e. CD, VCD, or DVD], 19; 14. pink cloth; 15. children's school books, 11 volumes. 16. bottle[s] of clear liquid oil, 1; 17. sex technique books, 3 volumes; 18. disks [illegible]; 19. instrument for cleaning inside a vagina, 10 tubes; 20. documents, 7 additional large bundles. 21. album of young children (photographs), 1 volume; 22. lubrication, 1 bottle. 23. sheets and pillow chases with cartoon pictures like children's sheets, one large bundle.

24. photo albums, 34 volumes; 25. books, 14 volumes. 26. film, 7; 27. 1 pad/mat + 1 sponge. 28. [illegible] medicine, 4 pills.

Total evidence: 3 white sacks numbered from number (01, 02, 03) + 01 teddy bear.

Confiscated hard disks, amount: 02

wooden club, 01.

-Aside from the material exhibits above, we did not confiscate anything else.

-This record was completed on the same date at hour: sixteen and thirty minutes and "was reviewed by the Justice Police Officer, the person in question, and listening participants" confirming that it is surely correct and agreeing to give a thumbprint or sign below.

[signature]
Huot Chhuor
Record Keeper

assistant
[signature]
Maj. Hin Sophal

participant
[signature]
Suos Van Sak

Justice Police Bureau
[signature]
Police Colonel Sun Ro

[signature]
Capt. Sin Saroeun

detainee or home owner
[thumbprint]
Michael J. Pepe
June 21, 2006

1st Witness
[signature]
Gary Phillips
6/21/06

2nd Witness
[signature]
Ron Dunne
IJM
21/06/2006

EXHIBIT D

Handbook 5200-09

☐☐☐☐☐☐☐☐☐☐☐☐☐-☐☐

[illegible]

B K O 7 9 R C 6 R K C O J 4

10. Seal or Other ID Nos.	
---------------------------	--

Date _____

Pepe ER 88

CUSTODY RECEIPT FOR RETAINED OR SEIZED PROPERTY
CONTINUATION SHEET

1. PORT		2. SEIZURE NO.	3. GENERAL ORDER NO.	4. OTHER CONTROL NO.	5. DATE RET./SEIZED		
		From BAG #1	BK006A-BK0008	From Line #1	6/19/06 + 6/20/06		
20. PROPERTY (By Line Item) Attach CF 58 if conveyance.							
A LINE ITEM NO.	B DESCRIPTION	C CONDITION	D TYPE OF CONTAINER	E U/M	F QTY	G APPRAISED DOMESTIC VALUE	H HELD BY PORT
1A	Purple pants - outside hanging	Fair	ENV	EA	1		6/19/06
1B	white sheet - master bedroom	-	ENV	EA	1	6/20/06	6/19/06
1C	Blue towel - master bedroom	-	ENV	EA	1	6/19/06	6/19/06
1D	blue stuffed rabbit AND tiger (stuffed)	(Good)	Box	EA	2 Pys		6/20/06
1E	bedsheets - kids room - pillow cases	(Good)	ENV	EA	1 ENV		6/20/06
1F	bedsheets - pillow case - kids room	(Good)	ENV	EA	1 ENV		6/20/06
1G	Pillow - kids room	(Good)	ENV	EA	1 ENV		6/20/06
1H	Pink towel - kids room	(Good)	ENV	EA	1 ENV		6/20/06
1I	Bedsheet - kids room	(Good)	ENV	EA	1 ENV		6/20/06
1J	Towel - kids bathroom	(Good)	ENV	EA	1 ENV		6/20/06
1K	Scarf, purse, red ribbon (kids room)	(Good)	ENV	EA	1 ENV		6/20/06
1L	child's pants - pink - kids room	(Good)	ENV	EA	1 ENV		6/20/06
1M	Photos - western (workroom)	(Good)	ENV	EA	1 ENV		6/20/06
1N	Photos - Asian w/ some negative (workroom)	(Good)	ENV	EA	1 ENV		6/20/06
1O	Photos in small album (workroom)	(Good)	ENV	EA	1 ENV		6/20/06
1P	Green disc - workroom	(Good)	ENV	EA	1 ENV		6/20/06
1Q	Kids books (messagae room & kids room)	(Good)	ENV	EA	1 ENV		6/20/06
1R	Pleather blue (above bed) (master bedroom)	(Good)	ENV	EA	1 ENV		6/20/06
1S	Misc docs: Soc Sec doc's, Business cards, med's, mchldg, cap'ts, VA, receipts... (workroom)	(Good)	ENV	EA	1 ENV		6/20/06
1T	Misc Docs: VA info, med info, receipts, papers (workroom)	(Good)	ENV	EA	1 ENV		6/20/06
1U	photos from computer room file - workroom	(Good)	ENV	EA	1 ENV		6/20/06
1V	Kids drawings / paintings (workroom)	(Good)	ENV	EA	1 ENV		6/20/06
1W	copy of REE passport (workroom)	(Good)	ENV	EA	1 ENV		6/20/06

00203

Case 2:07-cr-00168-SP Document 21-2 Filed 06/26/2007 Page 34 of 59

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

BAG #2

CUSTODY RECEIPT FOR RETAINED OR SEIZED PROPERTY
CONTINUATION SHEET

2325571 "BULK" 2004

CIS Handbook No. HB 5200-09

1. PORT	2. SEIZURE NO.	3. GENERAL ORDER NO. BAG #2	4. OTHER CONTROL NO. BK07060630008	5. DATE RET./SEIZED 6/20/06
---------	----------------	--------------------------------	---------------------------------------	--------------------------------

20. PROPERTY (By Line Item) Attach CF 58 if conveyance.

A LINE ITEM NO.	B DESCRIPTION	C CONDITION	D TYPE OF CONTAINER	E U/M	F QTY	G APPRAISED DOMESTIC VALUE	H HOLD BY PORT
2A	Socrates Foundation (store room)	good	ENV	EA	1 ENV	—	6/20
2B	medications: morphine sulfate, valium, cephalexin, nitroglycerin, preparation H, mycostatin, quercetin, unlabeled, commit, codalginate forte, Lithium, Exelon, (not in box)	good	ENV	EA	1 ENV	—	6/20
2C	medications: codalginate forte, Exelon, (not in box)	good	ENV	EA	1 ENV	—	6/20
2D	business cards (work room)	good	ENV	EA	1 ENV	—	6/20
2E	Bath (checkbook) daily planner (work room)	good	ENV	EA	1 ENV	—	6/20
2F	notebooks, books, address book (bed room + work room)	good	ENV	EA	1 ENV	—	6/20
2G	Megaphones - work room	good	ENV	EA	1 ENV	—	6/20
2H	notebooks (kids) - throughout house	good	ENV	EA	1 ENV	—	6/20
2I	mineral oil (house?) baby oil (kids room)	good	ENV	EA	1 ENV	—	6/20
2J	medications: baby oil, valium, lithium, nicoderm, sertraline, decolite, codalginate forte, quercetin, polyphal, microneedling (not in box) - bed room / work room	good	ENV	EA	1 ENV	—	6/20
2K	Profess (massage room)	good	ENV	EA	1 ENV	—	6/20
2L	CD's (19), spywarper (1), Dixie	good	ENV	EA	1 ENV	—	6/20
2M	comic books, 1st 8s, coloring note books, Easy drawing, phonics, Pin Spell (massage room)	good	ENV	EA	1 ENV	—	6/20
2N	photos (work room, throughout house)	good	ENV	EA	1 ENV	—	6/20
2O	misc docs, book, kids notebooks, articles, receipts, papers, bills, cards, brochure, calendar	good	ENV	EA	1 ENV	—	6/20

00204

Case 2:07-cr-00168-DSF

Document 21-2

Filed 06/26/2007

Page 32 of 59

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE2325511 Bulk Box cap
from BAE #3 Line #3CUSTODY RECEIPT FOR RETAINED OR SEIZED PROPERTY
CONTINUATION SHEET

CIS Handbook No. HB 5200-09

1. PORT	2. SEIZURE NO.	3. GENERAL ORDER NO. 15K02Q00000008	4. OTHER CONTROL NO. BAE-3, Line 3	5. DATE RET/SEIZED 6/2/06
---------	----------------	--	---------------------------------------	------------------------------

20. PROPERTY (By Line Item) Attach CF 58 if conveyance.

A LINE ITEM NO.	B DESCRIPTION	C CONDITION	D TYPE OF CONTAINER	E U/M	F QTY	G APPRAISED DOMESTIC VALUE	H UNIT
3A	Bedsheet (Pepe's bedroom, bed)	good	ENV	EA	1		6
3B	Curtain (girls bedroom)	good	ENV	EA	1		6
3C	cloth rope, PEPE's bedroom closet	good	ENV	EA	1		6
3D	red bowls (2) - upstairs landing	good	ENV	EA	1		6 1/2
3E	pillow cases (pink) - kids room	good	ENV	EA	1		6
3F	green pants (unk location in house)	good	ENV	EA	1		6
3G	medicines: bedroom (PEPE's) Kantax, Codaprin Forte, Maxipilline, wellbutin, Tempter, Plavix, Lexapro, Coughing, Conant Lam-ide, Dilox, Valium, Mucosolven, Xanax Neosprin, Silomax, Protonix, Unkdowny	good	ENV	EA	1		6
3H	VCD's (2) Pepe wedding - unknown	good	ENV	EA	1		6
3I	rope (Pepe's bedroom closet)	good	ENV	EA	1		6
3J	kid's top + handkerchief (unk in house)	good	ENV	EA	1		6 1/2
3K	"ESO" + "Variations" book (Pepe's bedroom)	good	ENV	EA	1		6
3L	blue photo album (unknown)	good	ENV	EA	1		6 1/2
3M	misc doc's (unknown)	good	ENV	EA	1		6 1/2
3N	misc doc's (unknown)	good	ENV	EA	1		6 1/2
3O	misc doc's (unknown)	good	ENV	EA	1		6 1/2
3P	books (The Prince & the Pauper + The Prince & the Pauper) (PEPE's bedroom)	good	ENV	EA	1		6 1/2

00205

Pepe ER 92

EXHIBIT E

The Kingdom of Cambodia
Nation Religion King

Phnom Penh Municipal Court

Number 103 A.Y.Kh.

Residential Search Warrant

I, Nget Sarat, the District Attorney assigned to the Phnom Penh Municipal Court
-having seen the laws regarding the appointment and function of the Courthouse of the
State of Cambodia, which was promulgated by Decree number 06 Kr., dated 08 February 1993.
-having seen the law regarding criminal legal procedure, which was promulgated by Decree
number 21, dated 08 March 1993.
-having seen report number 449/06 R.M.K., dated 17 June 2006 [illegible] case of human
sexual commerce in the residence at Number 83, Road 596, Subdistrict Boeng Kak II, District
Tuol Kork, City of Phnom Penh, resided in by Michael Joseph, nationality American.

Do hereby judge that: To free the victims and suppress the above-mentioned acts, there should be a
search made of the residence at Number 83, Road 596, Subdistrict Boeng Kak II, District Tuol
Kork, City of Phnom Penh
.....
.....

It Is Therefore Decided

To search the residence at number 83, Road 596, Subdistrict Boeng Kak II, District Tuol
Kork, City of Phnom Penh, with a resident named Michael Joseph.
.....
.....
.....

.....to search for evidence to support the above-mentioned criminal matter.

Phnom Penh, 17 June 2006

District Attorney

[stamp]

[signature]

00785

Pepe ER 94

EXHIBIT F

Ministry of the Interior
General Commissariat of the
National Police
Central Department of the
Justice Police
Department of Human
Trafficking Prevention
and Protection of Minors

Kingdom of Cambodia
Nation Religion King

Phnom Penh 19 June 2006

Number 450/06

Summary Report

Regarding: A case of sexual trafficking of children and torture, threatening "life puppets",
as well as rape.

Submitted

to the District Attorney of the Phnom Penh Municipal Court

Objective: to request a residential search warrant for house number 83 Road 596, Subdistrict Boeng Kak II, District Tuol Kork, which is the residence of Michael Joseph, male, American, to free the victim children who are being imprisoned and tortured by Michael, and search for some evidence relating to the crimes.

Referencing: The report of the NGO International Justice Mission (IJM) dated 16-06-2006.

-the report of the representative of the American Embassy 6-16 June 2006.

-information from the victim child named [REDACTED] dated 18 June 2006. IT

-the responses of the suspect named Nguyen Thi Ling, aka Tam.

-Summary Report number 133/006.

-Detainer number 831 A.Y.K of the Phnom Penh Municipal Court.

Facts: On 16 June 2006, the department received a report from the NGO International Justice Mission (IJM) and the American embassy about the activities of an American buying victim children and imprisoning them, torturing them, and forcefully raping them.

Investigation: After receiving the report of the NGO International Justice Mission (IJM), in cooperation with the American embassy, and information from the victim child named [REDACTED] IT, according to the confession of the suspect named Nguyen Thi Ling, aka Tam; according to the report of the Specialist Bureau of the Phnom Penh Police Commissariat, and the Detainer from the Phnom Penh Municipal Court, our department investigated and achieved the following results:

IT

-The victim child named [REDACTED], age 12, was tricked by the female named Nguyen Thi Ling, age 49, into being turned over to her faction. Another person named Sang and her husband, on day (forgotten), May, 2006, and the female named Sang and her husband promised to take her to perform lawful work as a masseuse, but instead Sang and her husband took her to be sold to an American named Michael Kostik [sic], male, age approximately 40 years old, who resides at number 83 Road 596, Subdistrict Boeng Kak II, District Tuol Kork. After purchasing them for sex, about four days later the suspect named Michael Kostik tortured and tied the hands and feet of the victim child named [REDACTED] and also threatened her life. Then he raped her [illegible].

IT The victim child had sustained injuries to her vagina and was bleeding profusely. Afterward, Michael telephoned to come and bring the victim child back home, and Sang gave \$100 (one hundred dollars) to her mother, then her mother took her back home. Aside from the above victim child, Michael forced 4 other victim children, including Khmer and Vietnamese children, ages from 8 to 13 years old, keeping them in his house and tying their hands and feet and torturing them, and forcing them to suck on his penis, then raping them in an inhuman fashion. Separately, Nguyen Thi Ling, aka Tam, was detained by the authorities of the Phnom Penh Bureau of Human Trafficking Prevention and Protection of Minorities on 28 May 2006. As for Sang and her husband, they got away because they did not have criminal records.

Balance and Conclusions: Relying on the report of the NGO International Justice Mission (IJM), in cooperation with the American embassy; on information from the victim children; on the responses of the suspects; on the report of the Phnom Penh Police Commissariat and the Detainer of the Municipal Court

- Sang and her husband did indeed trick a victim child into being trafficking sexually sexually [sic].

-Michael Joseph did indeed purchase the victim children and tortured and raped them.

Request: I request that the District Attorney issue a residential search warrant on the above residence in order to free the victims as well as find evidence connected with the above crimes.

-I request the detainment of Michael Joseph and Sang and her husband to be brought in for questioning to build a case for prosecution according to the law.

Department Chief

[signature]

Brigadier General Un Sokunthea

Permission to detain the suspects

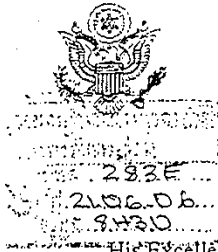
[illegible]

[signature] 17/6

Nget Sarat

District Attorney

EXHIBIT G



Embassy of the United States of America
Phnom Penh, Cambodia
June 20, 2006

His Excellency Hok Lundy
Police Commissioner General
Cambodian National Police General Commissariat
Ministry of Interior
Phnom Penh,
Kingdom of Cambodia

Your Excellency:

It was good to see you last Friday and I personally want to thank you for the quick action of the Cambodian National Police (CNP) in arresting Michael Joseph Pepe. It is comforting to know that a dangerous predator like Mr. Pepe is off the Cambodian streets.

As you are aware, over the weekend, CNP officers arrested Mr. Pepe, date of birth [REDACTED], 1953, for crimes against children, to wit, Debauchery. U. S. Embassy representatives from the Department of Homeland Security (DHS) and Diplomatic Security Service (DSS) assisted the CNP during the investigation.

Mr. Pepe is currently being detained by the CNP in Phnom Penh. We respectfully request that agents from DHS and DSS be authorized access to interview Mr. Pepe on June 22, 2006. Additionally, agents request that they have access to the evidence, specifically, Mr. Pepe's computer, hard drive, memory stick, and USB thumb drive so that they may be sent to the United States for computer forensic testing. Additionally, we would appreciate access to the biological evidence so that it may be sent to the United States for additional testing.

If you have any questions concerning these requests, please contact me at 023-728-207 or my Senior Investigator, Yarong Van at 012-810-466. I continue to look forward to working together on matters of mutual interest.

Sincerely,

Andrew G. Simpson
Acting Regional Security Officer
Attaché

00031

Pepe ER 99

EXHIBIT H

DEPARTMENT OF HOMELAND SECURITY ICE	PAGE 1
R E P O R T O F I N V E S T I G A T I O N C O N T I N U A T I O N	CASE NUMBER SX07QR06BK0008
	REPORT NUMBER: 001

DETAILS OF INVESTIGATION

On June 30, 2006, ICE Attache Singapore (ICE/SX) received a collateral request from Deputy Attache Gary Philips, ICE Attache Bangkok, Thailand (ICE/BK), to conduct forensic analysis of a computer hard disk drive, a USB JetFlash thumb drive, and a digital camera media card that were seized from Michael PEPE in June 2006. ICE Computer Forensic Agent (CFA) David Galante was requested to find evidential material specifically relating to the alleged sexual abuse of minors. In June 2006, the Cambodian National Police in Phnom Penh, Cambodia arrested PEPE for his alleged involvement in the sexual abuse of at least five females, ranging from 10-18 years in age.

On June 30, 2006, CFA Galante made a bit image copy of the Maxtor hard disk drive using EnCase, a licensed computer forensic software, version 5.05e. Utilizing EnCase software and a SureFly (Read-Only) hardware drive blocker (prevents any writing or modification to the target hard disk drive); CFA Galante created an exact duplicate image of PEPE's Maxtor hard disk drive to an ICE forensic hard drive disk (forensically wiped and fully formatted) and saved the image in a proprietary format. After the completion of the bit image copy, PEPE's Maxtor hard disk drive was stored in a secure location.

On September 19, 2006, due to ICE forensic computer failure, CFA Galante made a second bit image copy of the aforementioned seized items utilizing the same forensic process indicated above. Computer forensic analysis by CFA Galante revealed the following:

1) Maxtor hard disk drive:

HDD capacity: 40GB

HDD identification numbers: E-H011-02-3056, 2F040J0310634, F64RE5E...

Total Size: 40,020,664,320 bytes (37.3GB)
 File Integrity: Completely Verified, 0 Errors
 Acquisition Hash: 663e93afb296757ded3e2e8433d52122
 Verify Hash: 663e93afb296757ded3e2e8433d52122
 System Version: Windows XP

** Directory "C" Partition:

A) C:/Documents and Settings/Michael/Application Data/Ahead/PSD Image Database/

Cache. Under the "Cache" directory, CFA Galante identified four subdirectories: Albums, Groups, Thumbnails, Trash_Images.

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00207

Pepe ER 101

O F F I C I A L U S E O N L Y

DEPARTMENT OF HOMELAND SECURITY ICE	PAGE 2
R E P O R T O F I N V E S T I G A T I O N C O N T I N U A T I O N	CASE NUMBER SX07QR06BK0008
	REPORT NUMBER: 001

** Writer Note: PSD (Photoshop Deluxe) Image Database is a software program that allows personal computer user to create and manage different types of picture and multimedia catalogs. The PSD Image Database software was found installed on PEPE's hard disk drive.

Under the "Cache" directory, subdirectories: Albums, Groups, Thumbnails, CFA Galante discovered a listing of folders containing images, explicit child pornography images and images of females under the age of 18 engaged in sexually explicit conduct (See note #1 below). The images were found to be home-made (photographs taken by using a digital camera).

CFA Galante conducted further review of subdirectory "Albums" and discovered a listing of 81 folders. Some examples of the images located in the 81 folders are described as follows:

- Folder "23_Little 1" contained images of an naked adult male lying on his back on a bed and a naked female under the age of 18 (approximately 8 to 11 years old) sitting on top of him engaged in sexual explicit conduct.

- Folders "26_Ni 102905" and "27_Ni 2" showed a naked female under the age of 18 (approximately 8 to 11 years old) tied to a bed and also images of her hands tied to her legs with her genitals exposed. Furthermore, folders "26_Ni 102905" and "27_Ni 2" displayed images of the same female engaged in sexual explicit conduct with an adult male.

- Folder "_32 Nap & Kia 2" displayed Michael PEPE naked in a room (appears to be a bedroom) with a naked female under the age of 18 with her arms around PEPE's waist with both of their genitals exposed. Additionally, folder "_32 Nap & Kia 2" displayed the same female described above and another naked female under the age of 18, lying on a bed with their genitals exposed.

B) C/Program Files/Agent: In the "Agent" subdirectory, images of explicit child pornography, which appear to be commercially produced, were found.

C) C/RECYLER: In the RECYLER directory, explicit child pornography images and images of females under the age of 18 engaged in sexually explicit conduct were found. (See note #1 below).

2) Transcend USB JetFlash thumb drive:

Total Size: 261,750,784 bytes (249.6MB)
 File Integrity: Completely Verified, 0 Errors
 Acquisition Hash: 94d0696242c4eddcaba97c90ca60def0
 Verify Hash: 94d0696242c4eddcaba97c90ca60def0
 System Version: Windows XP

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O F F I C I A L U S E O N L Y

DEPARTMENT OF HOMELAND SECURITY ICE	PAGE 3
R E P O R T O F I N V E S T I G A T I O N C O N T I N U A T I O N	CASE NUMBER SX07QR06BK0008
	REPORT NUMBER: 001

Images of explicit child pornography were found. The images were found to be home-made (photographs taken by using a digital camera).

3) Lexar digital camera Compact Flash media card:

Total Size: 15,990,784 bytes (15.3MB)
 File Integrity: Completely Verified, 0 Errors
 Acquisition Hash: 2648514580eef99767864ecbb36c887c
 Verify Hash: 2648514580eef99767864ecbb36c887c
 System Version: Windows XP

Contained no derogatory information.

CFA Galante conducted a search of the unallocated space on the Maxtor hard disk drive and on the USB JetFlash thumb drive which resulted in the finding of explicit child pornography images and images of females under the age of 18 engaged in sexual explicit conduct. (See Note #2)

Investigations continue.

Note #1: Title 18, United States Code, Section 2256 defines "sexually explicit conduct" as "actual or simulated sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; bestiality; masturbation; sadistic or masochistic abuse; or lascivious exhibition of the genitals or pubic area of any person."

Note #2: When computer files are erased or deleted, the content of the file is not actually erased. The data from the 'erased file' continues to exist in an area commonly referred to as "unallocated space." As a result, the data remains behind for discovery through the use of data recovery and/or computer forensics software utilities.

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ime: 40GB - M.J. PEPE
 Ext: PEPE
 Description: Volume, Sector 0-40960015, 19.5GB
 e Acquired: 06/30/06 03:02:13PM
 gical Size: 8,192
 yysical Size: 8,192
 arting Extent: 040GB - M.J. PEPE-C4292166
 e Extents: 1
 eferences: 0
 yysical Location: 17,580,711,936
 yysical Sector: 34,337,328
 idence File: 40GB - M.J. PEPE
 e Identifier: 0
 ll Path: Michael Joseph PEPE\40GB - M.J. PEPE
 ginal Path: 40GB - M.J. PEPE

lume

System:	NTFS	Drive Type:	Removable
ctors per cluster:	8	Bytes per sector:	512
al Sectors:	40,960,016	Total Capacity:	20,971,528,192 bytes (19.5GB)
al Clusters:	5,120,002	Unallocated:	8,452,321,280 bytes (7.9GB)
e Clusters:	2,063,555	Allocated:	12,519,206,912 bytes (11.7GB)
ume Name:	SYSTEM	Volume Offset:	0
or Information:	NTFS 3.1 Chkdsk 0		

ice

ne: 40GB - M.J. PEPE
 ial Date: 06/30/06 03:02:13PM
 get Date: 06/30/06 03:02:38PM
 Path: I:\Evidence\Michael Joseph PEPE\Evidence\40GB - M.J. PEPE.E01
 e Number: SX07QR06BK0008
 ence Number: 006
 niner Name: David Galante
 s: Seized from Michael J. PEPE - Bangkok, Thailand
 e Type: Removable
 ntegrity: Completely Verified, 0 Errors
 isition Hash: 313f7e5c5e8ccbe9233fcf259f036cd0
 y Hash: 313f7e5c5e8ccbe9233fcf259f036cd0
 ase Version: 3.22g
 em Version: Windows 2000
 Stripe Size: 0
 Granularity: 0
 Errors: 1
 Errors: 0
 ression: None
 Errors

art Sector	Sectors
05,728	34,654,288

Total Size: 20,971,528,192 bytes (19.5GB)
Sectors: 40,960,016

EXHIBIT I

**PROVISIONS DATED SEPTEMBER 10, 1992 RELATING TO THE JUDICIARY
AND CRIMINAL LAW AND PROCEDURE APPLICABLE
IN CAMBODIA DURING THE TRANSITIONAL PERIOD**

The Supreme National Council (Hereinafter Referred To As "The Snc"),

Acting in accordance with the powers granted to it as the unique legitimate body and source of authority under Article 3 of the *Agreement on A Comprehensive Political Settlement of the Cambodian Conflict*, of 23 October 1991, (hereinafter referred to as the Agreement"),

Recalling Article 6 of the Agreement, according to which the SNC has delegated to the United Nations all powers necessary to ensure the implementation of the Agreement,

Further recalling that the United Nations Security Council, by its resolution 745 (1992), has established the United Nations Transitional Authority in Cambodia (hereinafter referred to as "UNTAC") in accordance with Article 2 of the Agreement, to carry out the mandate set forth in Annex 1 to the Agreement,

Considering that UNTAC has been given responsibility, pursuant to Articles 6 and 16 of the Agreement and sections B and E of Annex 1, for direct control or supervision in the areas of maintenance of law and order, protection of human rights, law enforcement, and judicial processes,

Considering further that all parties to the Agreement explicitly recognized in Article 15 that all persons in Cambodia, and all Cambodian refugees and displaced persons shall enjoy the rights and freedoms embodied in the Universal Declaration on Human Rights and other relevant international human rights instruments,

Considering also that the SNC acceded to Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights on 20 April 1992 and that these instruments entered into force with respect to Cambodia on 26 August 1992,

Concerned that the structures, laws and judicial institutions do not fully comply with the requirements of the Paris Agreement and sometimes totally or partially lacking in certain areas, and in any case are inadequate to ensure public order and human rights throughout most of the territory,

Recognizing that UNTAC has the responsibility to assist in establishing such structures, laws and judicial institutions where they are absent and to help improve them where they already exist in order to bring them up to the requirements of the Agreement,

Convinced of the urgent need to indicate clearly to all the Cambodian parties the rules of law which must be applied throughout Cambodia and the judicial procedures which must be put in place in order to ensure their effective application during the transitional period,

Further convinced that the application of these rules and procedures is necessary to foster a politically neutral climate and to prepare for free and fair elections,

Therefore adopts the following provisions relating to the judiciary, and criminal law and procedure applicable in Cambodia during the transitional period, and calls upon all Cambodian parties to apply them in good faith until such time as the Legislative Assembly resulting from the elections amends them or adopts new legislation in this area.

SECTION I: JUDICIAL SYSTEM

Article 1: independence of the judiciary

1. The independence of the judiciary must be ensured in accordance with The Basic Principles on the Independence of the Judiciary, adopted by the United Nations. Judges must decide in complete impartiality, on the basis of facts which are

presented to them, and in accordance with law, refusing any pressure, threat or intimidation, direct or indirect, from any of the parties to a proceeding or any other person.

2. The judiciary must be independent of the executive and legislative authorities and of any political party. Persons selected for judicial functions must be honest and competent.

3. The principle of the independence of the judiciary entitles and requires judges to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected. They must have decent and sufficient material conditions for the exercise of their functions. Judges must receive suitable training and be remunerated adequately to ensure their impartiality and independence.

Article 2: judicial functions

Judges and prosecutors both are magistrates. Only judges may adjudicate. Prosecutors are responsible for penal actions, which only they may initiate. They file indictments in court and in all other fora provided for in this text. The Attorney General pleads before the Supreme Court in the interest of the law, reviews the legality of indictments by provincial prosecutors, and organizes and supervises their work.

Article 3: courts

1. The Cambodian parties to the Agreement (hereinafter referred to as "the parties") agree to set up, with the collaboration of UNTAC, at least one trial court in each zone or province where such courts do not now function. Judges shall be appointed, promoted and dismissed by the existing administrative structure, under the supervision of UNTAC.

2. Trial courts are composed of a judge and a prosecutor. These courts have general jurisdiction over the application of these rules, as well as laws and other norms in force in their respective jurisdictions.

3. Alternate judges may be appointed in the same way to replace judges who disqualify themselves due to a conflict of interest or incapacity.

Article 4: appellate courts

1. The parties agree to set up, with the collaboration of UNTAC, at least one appellate court in any zone or territory under their control where they have not already established one.

2. Appellate Courts are composed of three judges and one prosecutor, appointed, promoted and dismissed by the existing administrative structure, under the supervision of UNTAC.

3. Alternate judges may be appointed in the same way to replace judges who disqualify themselves due to a conflict of interest or incapacity.

4. Any intervening party, prosecutor or the accused may appeal decisions of trial courts within a period of two months from the day judgment is pronounced in court if the accused is present; an additional fifteen days are added to this period if the judgment was rendered in absentia.

5. Appellate courts judge both law and fact.

Article 5: supreme court

In accordance with the wishes of the Party "State of Cambodia's, the current supreme court in Phnom Penh shall be improved so that it may comply with the requirements of Article 1 above and perform the following functions:

a) it exercises judicial review of the law;

b) it reviews appellate judgments on petition by the Attorney General, the convicted party, the intervening party or by their counsel within a period of two months from the day judgment is pronounced in the appellate court if the accused

is present for sentencing; an additional fifteen days are added to this period if the judgment was rendered in absentia.

c) it may send cases back to an appellate court and, if that court does not conform to its judgment, the Attorney General, the condemned party, the intervening party, or their counsel may resubmit the case to the Supreme Court within two months of the judgment under the same conditions mentioned under sub-paragraph b) above. The Supreme Court may then render a final decision on both the law and the facts.

Article 6: police

1. The police shall observe the Code of Conduct for Law Enforcement Officials and, to the extent possible, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the United Nations.
2. The parties whose law enforcement officials are not able to comply with the requirements of this text agree to collaborate with UNTAC in setting up and training an appropriate police force.

Article 7: attorneys and counsel

1. Attorneys are authorized to establish a Bar Association, which will take the form of a non-profit association with disciplinary and regulatory authority over its members. The Bar shall neither receive nor accept any instructions from any political party, nor from any legislative authority or executive authority acting for any of the Cambodian parties to the Agreement. During the transitional period, any person holding a degree equivalent at least to the university law degree or having five years of legal or judicial experience at a sufficiently high level of responsibility may be admitted to practice law.
2. Due to the small number of attorneys in Cambodia, during the transition period, any Cambodian holding a diploma of completion of secondary school education may represent an accused person in court, provided he or she is not an executive-level official or an elected official of the existing administrative structures or of a recognized political party. Furthermore, accused persons may ask a member of their family to represent them, regardless of level of education.
3. The representative of an accused party shall have the same rights in judicial proceedings as an attorney and be able to have access to any document, file motions or plead. In the present context the term counsel refers without distinction either to an attorney or to any other person representing an accused.
4. Foreign attorneys shall be allowed to appear in Cambodian courts, provided they furnish proof that they are members of a Bar in their own country or are officially authorized to practice in their country. The existing administrative structures agree to facilitate the granting of visas to attorneys coming to practice their profession in Cambodia.

Article 8: the correctional system

1. The aim of the correctional system is social rehabilitation. Treatment of all prisoners must be in conformity with the Standard Minimum Rules for the Treatment of Prisoners, and Basic Principles for the Treatment of Prisoners, adopted by the United Nations.
2. Any authority that arrests or detains suspects or detains anyone in pre-trial detention or following conviction, must maintain a prison registry signed every month by the prosecutor and one of the judges in the province or zone indicating, for purposes of verification, the name, age, address, date and reason of arrest, the date of arraignment, and, for convicted persons, the date of the sentencing and the prescribed punishment.

Article 9: visits to places of detention

1. Prosecutors and judges may at any time enter prisons to visit prisoners.
2. Authorized agents of UNTAC human rights, civil administration and civil police components have the same right. In this connection, each Cambodian party to the Agreement must compile a list of all its detention centers at the latest upon entry into force of the present text, and submit the list by this date to the central services of the UNTAC civil administration component.

SECTION II: CRIMINAL PROCEDURE

Article 10: legal assistance

1. The right to assistance of an attorney or counsel is assured for any person accused of a misdemeanor or crime.
2. No one may be detained on Cambodian territory more than 48 hours without access to assistance of counsel, an attorney, or another representative authorized by the present text, no matter what the alleged offence may be.

Article 11: military tribunals

Military tribunals have jurisdiction only over military offenses. Military offenses are those involving military personnel, whether enlisted or conscripted, and which concern discipline within the armed forces or harm to military property. All ordinary offenses committed by military personnel shall be tried in ordinary courts.

Article 12: treatment of detainees

1. No detainee shall be subjected to cruel, inhuman or degrading treatment or punishment, nor be beaten or tortured. Each detainee must have access to appropriate medical care. Prisoners must not be shackled or kept in isolation, whether they are in pre-trial detention or already sentenced. In no case shall the family of a detainee or prisoner be harassed as a result of the prisoner's behavior.
2. Arrest and detention must take place in accordance with the Standard Minimum Rules for the Treatment of Detainees, as well as the Body of Principles for the Protection of any Person Under Any Form of Detention or Imprisonment, adopted by the United Nations.

Article 13: arrest and detention

1. No one may be detained more than 48 hours without being brought before a judge, following charges filed by a prosecutor. In the event that it is impossible to abide by this time limit due to prevailing transportation conditions in the region, the time may be extended to the extent strictly necessary to bring the detainee before a judge by the most rapid means available.
2. The public prosecutor petitions the judge to indict and possibly to detain a suspect, based on the police file, by preparing an introductory indictment making reference to specific facts and legally characterizing the infraction according to the present text.
3. The judge may thus decide, by a reasoned decision:
 - to charge the suspect, with or without incarceration;
 - to release the suspect because the evidence is insufficient;
 - to continue the investigation without disclosing the name of the suspect.

4. Within the same time limit of 48 hours after arrest, extended if appropriate for the additional period mentioned in the subparagraph (1) above to allow for transportation, counsel must receive a copy of the file of accusation against the suspect.

Article 14: pre-trial detention

1. Only the judge, if so petitioned by the prosecutor, may decide to keep an accused in prison, and only if the accused is likely to escape and has not demonstrated an interest in remaining available to appear, such as a job, a family, a home, or if there is reason to believe that the accused will influence witnesses or the conduct of the investigation.
2. The accused has the right to petition the judge for release, either directly or through counsel. The judge must respond within five days by a reasoned decision.
3. The accused, the intervening party or their counsel or the prosecutor may appeal the decision of the judge within five days. The Appellate Court must judge within fifteen days petitions appealing decisions on detention.

4. The duration of a pre-trial detention must in no case exceed four months. However, upon the reasoned decision of a judge, this period may be extended to six months if justified by the requirements of the investigation. Minors less than 13 years of age may not be placed in pre-trial detention; minors 13 to 18 years of age may not be placed in pre-trial detention for more than one month. The length of such detention may be doubled if the minor is charged with a crime.

Article 15: administrative detention

No one in Cambodia may be detained by any administrative police nor for offenses not set out in this text or other applicable penal law or text.

Article 16: release of detainees

All persons detained or held in a center of detention not appearing on the list mentioned in Article 9 of the present text shall be considered as illegally detained and shall be immediately released, upon petition by a prosecutor, by any court, by counsel of the detained, or by any authorized representative of UNTAC civil administration, human rights or civil police components. Any person detained or held within a declared center of detention but not listed on the prison registry shall similarly be released.

Article 17: access to the file

1. If a judge decides that additional investigation is necessary, counsel of the accused shall, throughout the investigation, be immediately advised of new evidence presented against his or her client.

2. Counsel shall have access to the file of the person charged upon simple written request at any time during the proceeding, and shall obtain from the judge any results of investigation, expert testimony or hearings which he or she considers useful in the defense of his or her client.

Article 18: arrest without a warrant

Police may arrest anyone found in the act of committing a cognizable offense, in particular:

- if the suspect is observed committing a crime or misdemeanor, or if pursued by a public outcry;
- if the suspect is identified at the scene of a crime or misdemeanor by witnesses or the victim;
- if the suspect attempts to flee the scene of a crime or misdemeanor.

Article 19: arrest based on existence of substantially incriminating evidence

1. In all other cases, the investigating police may not arrest a suspect without substantially incriminating evidence which is exact and consistent and indicates that the suspect participated in the commission of a crime or misdemeanor.

2. A suspect who has fled may be arrested pursuant to an arrest warrant issued by a public prosecutor or judge and executed by police conducting the investigation.

3. The arrest warrant must stipulate facts and grounds for the arrest of the suspect.

4. The treatment of an arrested person shall be in accordance with the provisions of Article 13 of the present text.

5. Furthermore, the police may, if so instructed by a prosecutor or judge, subpoena any person useful to the investigation to appear before the police, judge or prosecutor if that person has refused to heed other requests to appear voluntarily. After appearance, a person so summoned shall be immediately released unless there are specific, consistent and serious charges against him or her, in which case the procedures outlined in Article 13 of the present text shall apply.

Article 20: searches

1. Searches must be conducted in the presence of the suspect and two witnesses, preferably neighbors or owners of the

building.

2. Except in cases of cognizable offenses, searches must be authorized by one of the judges of the competent court or by the prosecutor. They may take place only between the hours of 6:00 a.m. and 6:00 p.m. They should take place in the presence of the suspect if possible, and two witnesses from among the suspect's family members. Proof obtained in violation of the present Article is not admissible in court.

Article 21: time limits

1. Any person, whether or not in detention, must be judged no later than six months after arrest.
2. Counsel for the accused must be informed at least fifteen days prior to the date of the trial of his or her client.

Article 22: release for procedural error

1. If any of the procedures set out in Articles 10-21 is not complied with, the accused must be immediately released. This immediate release may be obtained by counsel for the accused or any authorized representative of UNTAC civil administration, human rights or civil police components. As of the date that the present text takes effect, all detained or imprisoned persons must have a file prepared in conformity with the present text and immediately available for review by judges, prosecutor or authorized agents of UNTAC. If no such file exists, these persons must be released on petition by their counsel, by any authorized representative of UNTAC civil administration, human rights or civil police components, by the judge or by the prosecutor.
2. Violations by public officials of the individual rights enumerated in Articles 10-21 of the present text will incur sanctions provided in Article 57.

TITLE III: TRIAL

Article 23: in camera hearings

All proceedings must be public, unless the victim or his or her representatives request a closed hearing and the judges concur.

Article 24: evidence

1. Witnesses mentioned in the police file, including police officers, must be heard in court. Witnesses may be examined by the intervening party, the accused or their respective counsel, or by the prosecutor.
2. All evidence, including police reports, is rebuttable and may be challenged during the trial.
3. Confessions by accused persons are never grounds for conviction unless corroborated by other evidence. A confession obtained under duress, of whatever form, shall be considered null and void. Nullification of a confession must be requested from the judge by counsel for the accused prior to the sentencing hearing.
4. The defense may call its own witnesses, and present its own evidence to the court.
5. All witnesses, whether for the prosecution or for the defense, may be summoned to appear before the court by subpoena and are subject to a fine of 100,000 to 1,000,000 Riels for failure to appear.

Article 25: presumption of innocence

All suspects, indicted and accused persons benefit from the most complete presumption of innocence.

Article 26: judgment

1. All criminal judgments are rendered "In the name of the Cambodian Nation." They must indicate the acts held against the

accused and the witnesses or evidence on which the judge relies, as well as the explicit grounds of the conviction.

2. The judgment, containing the explicit grounds for the conviction and the order, must be read aloud at the trial. A copy of the judgment shall be given to the parties in the trial at their request.

Article 27: intervention

1. Victims or their beneficiaries may directly or through counsel bring a civil action in a criminal case during the preliminary investigation, or during the sentencing hearing in order to claim damages and costs against the offender, co-offender or the accomplices to the offense. Counsel for the intervening party shall have access to the file on the same terms as those of counsel for the accused.

2. Parties guilty of the offense and their accomplices are jointly liable for reparations or compensation, under conditions outlined in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations.

Article 28: offenses based on opinion or belief

1. No one may be prosecuted for political opinion, religious convictions, or membership in a race or ethnic group.

2. Penal texts currently in force anywhere in Cambodia may no longer refer to offenses based on opinion or ideology, and are accordingly abrogated.

Article 29: review of certain trials

Any convicted person may directly or through the counsel or an attorney, request a review of their trial to determine whether they have been convicted for their ideas, opinions, statements, or their membership or non-membership in a racial, ethnic, religious, political or social group.

Article 30: statute of limitations

The Statute of Limitations is three years for misdemeanors and ten years for crimes. The Statute of Limitations ceases to run as soon as any legal process has been initiated.

TITLE IV: CRIMES

Article 31: murder

1. Anyone who kills or attempts to kill another person after premeditating the crime, or by preparing an ambush, or who kills or attempts to kill another person in the course of theft or rape, is guilty of the murder, and shall be liable to a punishment of imprisonment for a term of ten to twenty years.

2. Premeditation is the process of conceiving and preparing an attack on another person before the actual execution of the attack. An ambush consists of lying in wait with the intention of committing an act of violence against another person.

Article 32: voluntary manslaughter

Anyone who voluntarily kills or attempts to kill another person without any of the aggravating circumstances mentioned in Article 31, whether or not a weapon is used, is guilty of the crime of voluntary manslaughter, and shall be liable to imprisonment for a term of eight to fifteen years.

Article 33: rape

1. Anyone who rapes or attempts to rape another person of either sex is guilty of rape and shall be liable to imprisonment for a term of five to ten years.

2. Rape is any sexual act involving penetration against a nonconsenting person. If rape is accompanied by fraud, violence or threats, or if it is committed by anyone in a position of authority over the victim, the punishment shall be a term of imprisonment of ten to fifteen years.

Article 34: robbery

1. Anyone who steals or attempts to steal from another person under the following aggravating circumstances is guilty of the crime of robbery and shall be liable to a term of imprisonment of three to ten years:

- if the theft is accompanied by force, whether or not a weapon is used or the victim sustains injury;
- or if the theft is committed by several persons or by breaking and entering.

2. Theft is the fraudulent taking of another person's property with the intent of appropriating it.

Article 35: illegal confinement

Anyone who, without orders from the judicial authority, arrests, detains or illegally confines anyone shall be liable to imprisonment:

- for ten years, if the illegal confinement lasts longer than one month;
- from three to five years, if the confinement lasts less than one month.

Article 36: organized crime

Any individual who has taken part in a formal or informal association set up for the purpose of planning one or more crimes or misdemeanors against persons or property, if specific acts of preparation of these offenses have taken place, shall be liable to a term of imprisonment of from three to fifteen years.

Article 37: embezzlement by public officials

1. Any elected official, civil servant, military personnel or official agent of any of the four Cambodian parties to the Paris Agreement, or any political official who, acting in an official capacity or while performing official duties, with a view to owning or using, misappropriates, sells, rents, embezzles for personal profit or for that of a third party, property, services, money, personnel, any advantage, document, authorization or any function belonging to any public authority, is guilty of the crime of embezzlement of public property and shall be liable to imprisonment for a term of three to ten years.

2. After serving the sentence, the person convicted of this crime may be removed from elective office and may also be prohibited for a period of two years from standing for election or from holding any position in the public administration.

3. The penalty for this crime shall also include a fine of double the sum of money or value of the property embezzled.

Article 38: extortion

1. Without prejudice to possible disciplinary action, any civil servant, military personnel or official agent of any of the four Cambodian parties to the Paris Agreement, or any political official who, acting in an official capacity or while performing official duties, solicits or attempts to solicit or who receives or attempts to receive property, a service, money, staff, a professional position, a document, an authorization or any benefit in exchange for any one of these same elements is guilty of the crime of extortion and shall be subject to a punishment of three to seven years in prison.

2. After serving the sentence, the person convicted of this crime may be removed from elective office and may also be prohibited for a period of two years from standing for election or from holding any position in the public administration.

3. The penalty for this crime shall also include a fine of double the sum of money or value of the property extorted.

Article 39: illicit traffic in narcotic drugs

1. Except for derogations for reasons of public health granted by public health authorities of each of the existing administrative structures, the production, transport, importation, exportation, possession, offering, transfer, acquisition and use of plants, narcotics and psychotropic substances, the list of which is appears in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988, the Protocol to the Single Convention of 27 March 1972, Convention on Psychotropic Substances of 21 February 1971 and the Single Convention on Narcotic Drugs of 30 March 1961, are prohibited throughout Cambodian territory.

2. Any one who knowingly violates the present Article shall be liable to a punishment of five to fifteen years in prison. Furthermore, all illicit substances will be seized and the courts shall order their destruction after they have been analyzed.

TITLE V: MISDEMEANORS

Article 40: involuntary manslaughter

Any person who through carelessness, negligence or other culpable behavior involuntarily kills another person is guilty of the misdemeanor of involuntary manslaughter and shall be liable to a term of imprisonment of one to three years.

Article 41: assault and battery

1. Anyone who voluntarily strikes another resulting in injury leading to permanent disability or temporary disability lasting more than six months, is guilty of battery and shall be liable to a punishment of one to five years in prison.

2. If the disability lasts less than six months, the offence shall be punished by a term of imprisonment of six months to two years.

3. If there is no disability, the punishment shall be a term of imprisonment of two months to one year.

4. If any weapon is used to strike the blows, the period of imprisonment shall be doubled.

Article 42: indecent assault

1. Any person who sexually offends another, unconsenting, person of either sex by touching, caressing or any other sexual act not involving penetration, is guilty of the misdemeanor of indecent assault and shall be liable to a term of imprisonment of one to three years.

2. If the indecent assault is accompanied by fraud, violence or threat, or if it is committed by any person with authority over the victim, or if the victim is under 16 years of age, the duration of these sentences shall be doubled.

3. Any person who procures, entices or leads away, for purposes of prostitution, or exploits the prostitution of a minor, even with the consent of that minor, shall be liable to a term of imprisonment of two to six years.

Article 43: theft

Any person who steals or attempts to steal the property of any natural or artificial person, in the absence of any of the aggravating circumstances set forth in Article 34, is guilty of the misdemeanor of theft, and shall be liable to a term of prison of six months to five years.

Article 44: misdemeanors concerning cultural property

1. Any person who steals or attempts to steal cultural property belonging to the State or to natural or artificial persons, which is part of the Cambodian national heritage, shall be liable to a term of imprisonment of six months to ten years. Any person who illicitly exports or attempts to export or transfers or attempts to transfer ownership of cultural property shall be liable to the same punishment.

2. For the purposes of the present text, cultural property shall be as defined in the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970,

ratified by Cambodia on 26 September 1972. Any element of cultural property that has not been the subject of an authorization to transfer ownership or to export, issued by the Supreme National Council or by the body designated for this purpose by the SNC, shall be deemed part of the Cambodian national heritage.

3. The voluntary damaging of cultural property belonging to the Cambodian national heritage, through unauthorized or clandestine excavations, vandalism or any other means, shall incur the same punishment.

Article 45: fraud

Any person who through deceit, use of a false name or impersonation persuades another person of an illusory authority, or by making another person fear or anticipate an event of any sort thereby receives or attempts to receive all or part of a tangible or intangible estate of that or any other person, is guilty of the misdemeanor of fraud and shall be liable to a term of imprisonment of one to five years.

Article 46: embezzlement

Any person who takes or wastes, against the interest of the owner, possessor or holder, any goods, money, merchandise, or document which contains or itself represents an obligation or release, which was entrusted to the person for rental, deposit, commission, loan or modification (paid or unpaid); with the responsibility to return it or to offer it back or to put it to an agreed upon use, is guilty of embezzlement and shall be liable to a punishment of a term of imprisonment of one to five years.

Article 47: counterfeit of seals, bank notes, public documents, stamps and trademarks

1. Any person who counterfeits seals of existing administrative structures or makes improper use of such seals
2. Any person who counterfeits or falsifies a bank note, postage stamp, validation sticker, fiduciary value, share, bond, currency that is legally exchangeable in Cambodia, passport or identity card of existing administrative structures, or who makes use of or brings the same into Cambodian territory;
3. Any person who counterfeits or falsifies a bank note, postage stamp, validation sticker, fiduciary value, share, bond, currency that is legally exchangeable in a foreign country, passport or identity card of a foreign country, or who makes use of or brings the same into Cambodian territory is guilty of the misdemeanor of counterfeit and is liable to a term of imprisonment of five to fifteen years.

Article 48: misappropriation of intellectual property

1. Any production of a writing, musical composition, drawing, painting, film, photograph, or any other printed or engraved representation which does not respect the intellectual property rights of its author(s) constitutes misappropriation of intellectual property.
2. Any importation, exportation, reproduction, public showing or distribution of a reproduction of a work with intent to disrespect the intellectual property rights of the author also constitutes misappropriation of intellectual property.
3. The copyright to which the present text refers is that which is protected by the Bern Convention of 9 September 1886, revised in Paris on 24 July 1971, and by the "International Copyright Convention" signed in Geneva on 6 September 1952, revised in Paris on 24 July 1971 (NB: exact English title of Convention required).

Article 49: forgery of public document

Any elected official, civil servant, military personnel, or official agent of any of the four Cambodian parties to the Paris Agreement or of any registered political party who, acting in an official capacity or while performing official duties, commits a forgery, either by false signature, or by alteration of a deed, writing or signature, or by impersonation, or by false entry into a registry or other public deed after its execution or closing, and any person who knowingly makes use of the same, is guilty of forgery of a public document and shall be liable to a term of imprisonment of five to fifteen years.

Article 50: forgery of private commercial or bank document

1. Any person who, by one of the means outlined in Article 49, forges or attempts to forge a private, commercial or bank document shall be liable to a term of imprisonment of five years or a fine of one million to ten million Riels.

2. Any person who knowingly makes use of a forged private, commercial or bank document shall be liable to the same punishment.

Article 47: receiving and concealing stolen goods

Any person who receives or purchases goods which he or she knows to have been obtained through theft or falsehood or a misdemeanor of any kind is guilty of the misdemeanor of receiving and concealing stolen goods, and faces a punishment of one to five years in prison. This is an ongoing offence, for which the Statute of Limitations does not toll until the receiving and concealing has terminated.

Article 48: intentional defacement

Any person who intentionally defaces or attempts to deface the property of others is guilty of the misdemeanor of intentional defacement and faces a punishment of one to three years in prison. If the defacement is minor or the property of little value the punishment shall be reduced to two months to one year. Defacement of elements of cultural heritage which form part of the Cambodian national patrimony is treated in Article 45.

Article 49: intentional arson

He or she who defaces or attempts to voluntarily deface through fire or explosive substance the property of another is guilty of the misdemeanor of voluntary arson and faces a punishment of one to three years in prison.

If the property burned is the dwelling of one or more persons, the duration of these prison terms is doubled.

Article 50: carrying or transporting illegal arms

Any person who carries or transports a firearm, explosives, or any artillery, without having been authorized to do so according to guidelines established by UNTAC which pertain to holding and carrying arms, is guilty of illegally carrying or transporting arms and faces a punishment of six months to three years in prison.

Any person without uniform who carries a weapon other than a hunting weapon must be able to prove to inquiring authorities, especially UNTAC representatives, his or her authorization to carry the weapon. In the event he or she is not able to do so, the weapon is to be immediately confiscated and a report forwarded to the competent judicial authority.

Article 51: coercion of witnesses

Any person who threatens, intimidates, or places pressure upon a witness in a judicial proceeding is guilty of the misdemeanor of coercion and thereby incurs a punishment of one to two years in prison.

Article 52: false witness

Any person who, in a judicial proceeding, bears false witness, in recounting to the Court facts which he or she knows to be erroneous or false, and which are recognized as such by the Court, is guilty of false testimony and faces a punishment of one to two years in prison.

Article 53: infringement of individual rights

Any public agents, including police or military agents, who deliberately infringe upon rights to be free from physical abuse and the sanctity of the home, protected by the present text, will be punished by one to two years in prison.

Article 54: intentional corruption

Any person who corrupts or attempts to corrupt any elected official, civil servant, military officer or representative of one of

the four Cambodian parties in attendance at the Paris Peace Accords, in the execution of his or her duties, by promising property, service, money, staff, professional position, document, authorization or any benefit whatsoever in exchange for any one of these same benefits has committed the misdemeanor of intentional corruption and faces a punishment of one to three years in prison.

Article 55: instigating crimes and misdemeanors with consequences

Punishment as accomplices to an action classified as a crime by the present text will apply to those who, by oration, shouts or threats made in public places, or by writings, printings, drawings, engravings, paintings, emblems, films or any other mode of writing, speech, or film which is sold, distributed, offered for sale or displayed in public places, either by signs or posters shown to the public, or by any other means of audiovisual communication, directly provokes perpetration of an aforesaid action, if the action has consequences. This shall also be the case when the provocation is followed merely by an attempted crime.

Article 56: instigating crimes and misdemeanors without consequences

Those who, through one of the means enunciated in the preceding Article, directly provoke a crime or misdemeanor outlined in the present text, will be punished, in the event that this provocation is without consequences, by one to five years in prison.

Article 57: instigating discrimination

Those who, by one of the means enunciated in Article 55, have provoked discrimination, hostility or violence against a person or a group of persons due to their national or social origin or their membership or non-membership in an ethnic, national, racial, economic, linguistic or recognized religious group, will be punished by imprisonment of one month to one year and a fine of one million to ten million Riels.

Any outrageous communication, scornful term or abusive language which does not verify or disprove an alleged fact is a libel.

Defamation or libel made through one of the means enunciated in Article 55 shall be punished by imprisonment of eight days to one year and/or a fine of one million to ten million Riel.

In the event of conviction for one of the deeds outlined in the preceding paragraphs, the court may direct that its decision be posted at locations which it specifies, at the expense of the convicted, or published in one or more periodicals, at the expense of the convicted, up to a maximum of ten million Riels. A public action concerning misdemeanors outlined in the present Article may also be commenced by any group comprised according to rules established by the Supreme National Counsel, upon depositing with the competent prosecutor a complaint representing the civil party.

In all cases, the employer, printer, editing house, printing agent and distribution agent are jointly liable for payment of damages accorded to the victim(s).

Article 60: use of narcotics

Those who use for their personal consumption narcotics or psychotropic substances addressed in United Nations conventions mentioned in Article 40 will be punished by imprisonment of one month to a year.

TITLE VI: PUNISHMENTS

Article 61: equality of punishments

The principle of equality of all persons under penal law necessitates that punishments applicable in Cambodia be the same in all provinces or zones. The present punishments are henceforth applicable throughout Cambodia.

Article 62: death penalty

The death penalty is abolished in Cambodia.

Article 63: attenuating circumstances and exculpation of minors

Judges must weigh attenuating circumstances to reduce below perhaps even the minimum prescription punishments outlined in the present text, notably:

- the age of the convicted;
- the personal background of the convicted which might lead him or her to abrogate his or her responsibilities
- the psychological or psychiatric state of an accused which is certified by a psychologist or psychiatrist;
- circumstances of the crime or misdemeanor which rendered absolutely necessary the actions of the convicted.

For any accused person of less than 18 years of age, punishments outlined in preceding Articles are to be reduced by half.

Article 64: complicity

He or she who supplies the modalities of an offence, orders that the offence be committed or facilitates commission of the offence shall be considered an accomplice and punished with the same punishment applicable to the principal instigator.

Article 65: reprieve

Prison sentences, but not those for criminal confinement, may in their entirety or in part always accommodate a reprieve. In such an instance the accused will not serve his or her sentence so long as he or she does not commit another offence outlined in preceding Articles for a period of five years after judgment.

Article 66: conditional release

Convicted persons who are serving a prison term or criminal confinement may benefit from a conditional release regime dictated by the court which convicted them, after having served half of their prison term or two thirds of their criminal confinement, upon the advice of penitentiary officials, if the court feels that this release will serve to facilitate rehabilitation. Any offence defined within preceding Articles which is committed during the period of conditional release immediately invokes completion of the sentence.

TITLE VII: METHOD OF APPLICATION

Article 67: disregard of inconsistent rules

Any text, any practice, any rule written or not written which goes against the letter or the spirit of the present text is purely and simply annulled.

Article 68: international instruments

Instruments of the United Nations which are mentioned in the present text will be applicable in Cambodia as soon as they are proclaimed by UNTAC.

Other pertinent international instruments may serve to interpret the present text.

Article 69: entry into force

This text takes effect exactly two months after the date of its approval by the Supreme National Counsel, except with respect to titles IV, V, VI and VII, which take effect immediately.

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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION
13

14
15 UNITED STATES OF AMERICA,
16 Plaintiff,
17 v.
18 MICHAEL PEPE,
19 Defendant.
20

NO. CR 07-168-DSF

**NOTICE OF MOTION; MOTION
TO SUPPRESS EVIDENCE
DISCOVERED AS RESULT OF
COMPUTER MEDIA SEARCH
WARRANT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Hearing Date: September 17, 2007
Hearing Time: 10:00 a.m.

21 TO: ACTING UNITED STATES ATTORNEY GEORGE CARDONA, AND
22 ASSISTANT UNITED STATES ATTORNEY PATRICIA DONAHUE:
23

24 PLEASE TAKE NOTICE that on September 17, 2007, at 10:00 a.m., or as
25 soon thereafter as counsel may be heard, defendant, Michael Pepe, will bring on for
26 hearing the following motion:
27
28

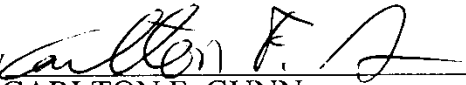
MOTION

Defendant, Michael Pepe, through his counsel of record, Deputy Federal Public Defender Carlton F. Gunn and Deputy Federal Public Defender Charles Brown, hereby moves this Honorable Court for an order suppressing all evidence found on an additional computer and computer media which were searched pursuant to a search warrant issued on May 17, 2007. This motion is made pursuant to the Fourth Amendment to the United States Constitution and is based upon the attached memorandum of points and authorities, all files and records in this case, and such additional argument and evidence as may be presented at the hearing on the motion.

Respectfully submitted,

SEAN K. KENNEDY
Federal Public Defender


DATED: July 31, 2007

By 
CARLTON F. GUNN
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Respectfully submitted,

SEAN K. KENNEDY
Federal Public Defender

DATED: July 30, 2007

By 
CHARLES C. BROWN
Deputy Federal Public Defender

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 I.

4 **INTRODUCTION**

5
6 Michael Pepe is charged with four counts of engaging in illicit sexual conduct
7 with a minor in foreign places, in violation of 18 U.S.C. § 2423(c). As explained
8 more fully in the previously filed Motion to Suppress Evidence, there was a search of
9 Mr. Pepe's home in Cambodia when he was arrested in June, 2006, and various items
10 of evidence were seized. Included in that evidence were two computers and various
11 computer media. One of the computers, a thumb drive, and a digital camera media
12 card were subsequently searched – without a search warrant – by a Bureau of
13 Immigration and Customs Enforcement agent in Singapore, and that warrantless
14 search is part of the subject of the previously filed Motion to Suppress Evidence.

15
16 The additional computer and computer media were not searched at the time the
17 other computer, thumb drive, and digital camera media card were searched, but were
18 searched more recently, pursuant to a search warrant which was issued on May 17,
19 2007 and is attached in Exhibit A. That warrant authorized the search of the second
20 computer, twenty-seven pornographic CDs, thirty-one other CDs, and five 3.5-inch
21 floppy disks. *See Exhibit A (warrant)*,¹ at 1-5. Evidence found pursuant to that
22 warrant included visual depictions of minors, some of which are the alleged victims

23
24
25
26 ¹ Exhibit A is the search warrant with the affidavit in support of the search
27 warrant attached. There are duplicate page numbers because the search warrant and
28 the affidavit both have their own page numbering. The warrant and affidavit will be
cited in this motion as either "Exhibit A (warrant), at [page or paragraph number]" or
"Exhibit A (affidavit), at [page or paragraph number]."

1 in this case, *see* Exhibit B, and at least some child pornography.² This second motion
2 to suppress evidence seeks to suppress this evidence.

3
4 II.

5 ARGUMENT

6
7 A. THE EVIDENCE FOUND PURSUANT TO THE SEARCH WARRANT IS A
8 FRUIT OF THE PRIOR UNLAWFUL COMPUTER MEDIA SEARCHES
9 BECAUSE THE WARRANT WAS BASED ON THE EVIDENCE FOUND IN
10 THOSE SEARCHES.

11
12 Describing evidence discovered in a prior unlawful search in the affidavit for a
13 search warrant taints the search warrant and may make that warrant and the evidence
14 found pursuant to the warrant a fruit of the prior unlawful search. What a court
15 considering this question must do is “excise the tainted evidence and determine
16 whether the remaining untainted evidence would provide a neutral magistrate with
17 probable cause to issue a warrant.” *United States v. Heckenkamp*, 482 F.3d 1142,
18 1149 (9th Cir. 2007) (quoting *United States v. Reed*, 15 F.3d 928, 933 (9th Cir. 1994)
19 and *United States v. Vasey*, 834 F.2d 782, 788 (9th Cir. 1987)).

20
21 The search warrant affidavit here relied almost entirely on what was discovered
22 in the prior, unlawful searches. Out of a little more than five pages and six
23 paragraphs describing the substantive evidence against Mr. Pepe, *see* Exhibit A
24 (affidavit), ¶¶ 9, 12-16, more than four pages and four paragraphs (with over twenty
25 detailed subparagraphs) describe the evidence found in the prior computer media
26 searches, *see* Exhibit A (affidavit), ¶¶ 12-15. All that remains when this part of the

27
28 ² The report which is attached as Exhibit B does not reflect the discovery of
any child pornography, but the prosecutor has informed defense counsel that child
pornography was found on at least one of the CDs.

1 affidavit is stricken is the identification of Mr. Pepe as the abuser by four alleged
2 victims, *see* Exhibit A, (affidavit) ¶ 9, and a summary of a letter to his sister in which
3 he makes several arguably suggestive admissions, *see* Exhibit A (affidavit), ¶ 16. The
4 only reference to photographs is a statement taken from the letter about Mr. Pepe
5 “taking naked pictures, at SANG’S request, of her two nieces,” but subsequently
6 “eras[ing] those files from his computer.” Exhibit A (affidavit), ¶ 16.d.

7
8 This is hardly sufficient to justify the search of what appears to be every item
9 of computer media found in Mr. Pepe’s home, including not just his computers but
10 also diskettes and CDs no matter what the markings on them indicated they were for.
11 And even were the letter’s passing reference to photographs sufficient, “the
12 government . . . ha[s] a further hurdle to surmount.” *United States v. Duran-Orozco*,
13 192 F.3d 1277, 1281 (9th Cir. 1999). It must show that the agents in fact *would* have
14 sought and obtained this additional warrant even without the earlier search. *See*
15 *Murray v. United States*, 487 U.S. 533, 542 (1988); *Duran-Orozco*, 192 F.3d at 1281.

16
17 The government cannot surmount even the first hurdle here. The later search
18 warrant is tainted by the prior unlawful searches, and so the evidence discovered on
19 the additional computer media must be suppressed.

20
21 B. THE SEARCH WARRANT DID NOT ESTABLISH PROBABLE CAUSE TO
22 SEARCH THE CDS LISTED IN THE SEARCH WARRANT.

23
24 There are problems with the search warrant more troubling than just its
25 extensive reliance on evidence uncovered in prior unlawful searches. One of those
26 problems is the inclusion in the search warrant of what appears to be a general
27 laundry list of every CD found in Mr. Pepe’s home. Included in the list are not just
28 unlabeled or manufacturer labeled CDs with no identifying information about the

1 contents, but CDs with content identification such as “the essential SIMON &
2 GARFUNKEL”; “A Midsummer Night’s Dream”; and “MASTERS OF CLASSICAL
3 MUSIC,” “BACH,” “BRANDENBURG CONCERTO NO. 1,” and “VIOLIN
4 CONCERTO IN E MAJOR.” Exhibit A (warrant), at 4. Other CDs have handwritten
5 notes suggesting their content, including, inter alia, “VARIOUS VILLAGES &
6 CHANRY”; “CHANRY,” “BATTENBANG TRIP,” “CHANRY,” and “CHANRY
7 ID”; and “SCH. & WEDDING.” Exhibit A (warrant), at 2-3. Still other CDs have
8 markings with references to computer software, such as “Norton,” “Windowsxp,” and
9 “SAMSUNG CD-RW.” Exhibit A (warrant), at 4.

10
11 The affidavit certainly does not establish probable cause to search items that
12 are labeled in a way to indicate some other content. And in the absence of some
13 further explanation, there is also a lack of probable cause as to CDs without any label
14 regarding content. That some child pornography was found on one computer and a
15 thumb drive does not mean that there was child pornography on separate CDs. Such
16 a broad sweep of the search warrant might be defensible if there were some
17 explanation in the affidavit of how and why people who possess child pornography
18 store and preserve the pornography, such as there usually is in other child
19 pornography search warrants, *see, e.g., United States v. Hay*, 231 F.3d 630, 635-36
20 (9th Cir. 2000) (discussing expert opinions contained in affidavit that there are
21 usually other pornographic images found, how child pornography is traded and
22 distributed over the Internet, how computer is an “ideal repository for child
23 pornography” and is one of the preferred methods of distribution, that collectors and
24 distributors of child pornography rarely if ever dispose of it and store it for long
25 periods, and how even deleted files can be retrieved by a computer expert); *United*
26 *States v. Lacy*, 119 F.3d 742, 746-47 (9th Cir. 1997) (noting expert opinions
27 contained in affidavit that collectors and distributors of child pornography rarely if
28 ever dispose of material and store it for long periods and that there was no way to

1 specify what hardware and software would have to be seized in order to retrieve
2 images). Without some such explanation as to why to suspect every CD – or even
3 some particular CD – the affidavit did not establish probable cause as to the CDs in
4 the present case.

5
6 C. THE GOVERNMENT MUST SHOW THE COMPUTER SEARCH WAS
7 PROPERLY LIMITED TO THOSE FILES WITH MIGHT REASONABLY BE
8 EXPECTED TO CONTAIN THE ITEMS WHICH THE SEARCH WARRANT
9 ALLOWED AGENTS TO SEARCH FOR.

10
11 As noted in *United States v. Walser*, 275 F.3d 981 (10th Cir. 2001):

12 [O]fficers conducting searches (and the magistrates issuing
13 warrants for those searches) cannot simply conduct a sweeping,
14 comprehensive search of a computer's hard drive. Because
15 computers can hold so much information touching on many
16 different areas of a person's life, there is a greater potential for the
17 "intermingling" of documents and a consequent invasion of
18 privacy when police execute a search for evidence on a computer.

19 *Id.* at 986. There are methods of targeting searches of computer media so as to avoid
20 intruding into every single personal document or file that may be on the media,
21 moreover. Methods noted in *United States v. Carey*, 172 F.3d 1268 (10th Cir. 1999),
22 include "observing files types and titles listed on the directory, doing a key word
23 search for relevant terms, or reading portions of each file stored in the memory." *Id.*
24 at 1276. Methods noted in another, district court, case include "limiting the search by
25 date range; doing key word searches; limiting the search to text files or graphics files;
26 and focusing on certain software programs." *In the Matter of the Search of 3817 W.*
27 *West End, First Floor Chicago, Illinois 60621*, 321 F. Supp. 2d 953, 959 (N.D. Ill.
28 2004). *See also* Raphael Winick, *Searches and Seizures of Computers and Computer*

1 *Data*, 8 Harv. J. L. & Tech. 75, 108 (Fall 1994) (“[A]n investigator reasonably
2 familiar with computers should be able to distinguish database programs, electronic
3 mail files, telephone lists and stored visual or audio files from each other.”).

4
5 Some courts have suggested that the search warrant itself should establish a
6 protocol for the computer search, *see, e.g., In the Matter of the Search of 3817 W.*
7 *West End, First Floor Chicago, Illinois 60621*, 321 F. Supp. 2d at 957; *United States*
8 *v. Barbuto*, No. 2:00CR197K, 2001 WL 670930, at *4-5 (D. Utah April 12, 2001),
9 but the Ninth Circuit, while “look[ing] favorably upon the inclusion of a search
10 protocol,” has held that “its absence is not fatal,” *United States v. Hill*, 459 F.3d 966,
11 978 (9th Cir. 2006). Still, that does not mean Fourth Amendment reasonableness
12 limitations can be completely ignored, either by the agents or by a court reviewing the
13 agents’ search methodology. As explained by the Ninth Circuit:

14 [E]ven though a warrant authorizing a computer search might not
15 contain a search protocol restricting the search to certain programs
16 or file names, the officer is always “limited by the longstanding
17 principle that a duly issued warrant, even one with a thorough
18 affidavit, may not be used to engage in a general, exploratory
19 search.” The reasonableness of the officer’s acts both in executing
20 the warrant and in performing a subsequent search of seized
21 materials remains subject to judicial review.

22 *Hill*, 459 F.3d at 978.

23
24 This means the government must show the computer search was properly
25 limited to computer files that the searching agent could reasonably believe might
26 contain items which the search warrant allowed the agent to look for. Any evidence
27 which was found in a different place or through some more sweeping search must be
28 suppressed.

1 D. ANY EVIDENCE FOUND ON MEDIA ON WHICH THE GOVERNMENT
2 DID NOT FIND EVIDENCE WITHIN THE SCOPE OF THE SEARCH WARRANT
3 WITHIN THE SIXTY-DAY SEARCH PERIOD AUTHORIZED BY THE SEARCH
4 WARRANT MUST BE SUPPRESSED.

5
6 The search warrant placed a sixty-day time limit on the search of the computer
7 media, *see* Exhibit A (warrant), at 5-6, and specified certain items to be seized,
8 including, *inter alia*, child pornography and non-pornographic visual depictions of
9 minors, *see* Exhibit A (warrant), at 7. At least as of July 12, 2007 which was almost
10 sixty days after issuance of the search warrant, the only material within the scope of
11 the search warrant that had been found on the computer media was visual depictions
12 of minors on eleven of the thirty-one CDS. *See* Exhibit B, at 5-6. As to the other
13 items, there was “no derogatory information and no visual depictions of minors.” *See*
14 *id.*

15
16 Subsequent searches of the other items, unless within the sixty-day search
17 period (which would have ended on July 15, 2007), would not have been authorized
18 by the search warrant and so any evidence found in such subsequent searches would
19 be the product of a warrantless search. The defense is not clear as to whether there is
20 any such evidence,³ but if there is, it should be suppressed.

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26 ³ As noted *supra* p. 4 n.2, the prosecutor has indicated to defense counsel that
27 there was child pornography found on a least one of the CDS. Defense counsel are
28 not clear on whether this is included within the “visual depictions of minors” which
had been found by July 12, 2007 or whether it is the product of some later search.
Defense counsel is also not clear on what, if any, additional evidence may have been
found after July 15, 2007.

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III.CONCLUSION

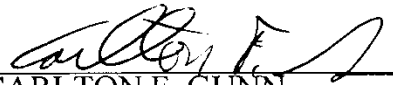
Initially, the evidence found in the search of the second computer and the computer media must be suppressed because it is the fruit of the prior unlawful search of the first computer, thumb drive, and digital camera media card. If the Court for some reason finds the prior search was not unlawful, the search of the CDs under the search warrant was unlawful because the search warrant did not establish probable cause for search of the CDs. Finally, the government must show the search of the computer media was conducted by reasonable means aimed at finding only the material which the search warrant authorized the agents to search for and must show that any evidence it intends to use was found on media on which evidence was found no later than July 15, 2007.

Respectfully submitted,

SEAN K. KENNEDY
Federal Public Defender

DATED: July 31, 2007

By

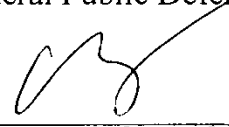

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Respectfully submitted,

SEAN K. KENNEDY
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DATED: July 31, 2007

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11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,) CR No. CR 07-168-DSF
13)
Plaintiff,) GOVERNMENT'S CONSOLIDATED
14) OPPOSITION TO DEFENDANT'S MOTIONS (1)
v.) TO SUPPRESS EVIDENCE AND (2) TO
15) SUPPRESS EVIDENCE DISCOVERED AS A
MICHAEL JOSEPH PEPE,) RESULT OF COMPUTER SEARCH WARRANT;
16) MEMORANDUM OF POINTS AND
Defendant.) AUTHORITIES; DECLARATIONS OF GARY
17) PHILLIPS AND EDDY WANG

18 Hearing: September 17, 2007
19 Time: 10:00 a.m.
Place: Courtroom of the
20 Honorable Dale S. Fischer

21 Plaintiff United States of America, by and through its counsel of record, hereby submits
22 its opposition to (1) the Motion to Suppress Evidence (Docket No. 21), and (2) the Motion to
23 Suppress Evidence Discovered as a Result of Computer Search Warrant (Docket No. 33), filed
24 by defendant Michael Joseph Pepe.
25
26
27
28

1 This opposition is based on the attached memorandum of points and authorities and
2 declarations, the files and records of this case, and any additional argument and evidence
3 presented at the hearing.

4 Dated: August 22, 2007

Respectfully submitted,

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<u>United States v. Castillo</u> , 866 F.2d 1071 (9th Cir. 1988)	21
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<u>United States v. Maher</u> , 645 F.2d 780 (9th Cir. 1981)	11
<u>United States v. Marzano</u> , 537 F.2d 257 (7th Cir. 1976)	11
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<u>United States v. Reed</u> , 15 F.3d 928 (9th Cir. 1994)	15
<u>United States v. Rose</u> , 570 F.2d 1358 (9th Cir. 1978)	11
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MEMORANDUM OF POINTS AND AUTHORITIES**I****INTRODUCTION**

Defendant Michael Pepe ("Pepe") is charged with four counts of violating 18 U.S.C. § 2423(c), Engaging in Illicit Sexual Conduct in Foreign Places. Pepe is a United States citizen who traveled to Cambodia and raped and molested young girls. The Cambodian National Police ("CNP") executed a search warrant at defendant's residence in Cambodia and recovered substantial evidence that corroborates the statements made by the victims. That evidence has been turned over to United States Immigration and Customs Enforcement ("ICE") and brought to the United States.

Pepe's arrest, and the search of his residence, were conducted by the CNP. They were not done at the behest of the United States government. The Fourth Amendment and the exclusionary rule do not apply to the actions of foreign law enforcement. The fact that American law enforcement was present when the CNP conducted the search of defendant's residence in Cambodia does not transform the CNP's law enforcement activity into a joint venture. Accordingly, the evidence seized by the CNP is admissible. Moreover, even if the CNP search had been a joint venture, the search was lawfully conducted pursuant to a Cambodian search warrant. Compliance with foreign law renders the search reasonable, and the evidence seized admissible. In addition, since the good faith exception applies, even if the search violated Cambodian law, American law enforcement's good faith belief that Cambodian law was followed defeats defendant's suppression motion.

II**STATEMENT OF FACTS¹**

On or about June 14, 2006, the United States Embassy in Cambodia (the "Embassy") informed Gary J. Phillips, an Assistant Attache for U.S. Immigration and Customs Enforcement

¹ The facts set forth in this Statement of Facts are from the Declarations of Gary J. Phillips and Eddy Wang, both of which are attached hereto.

1 (“AIA”) in Bangkok, Thailand, that the Embassy had received the following information from
2 World Hope International (“WHI”), a non-governmental organization: The International Justice
3 Mission (“IJM”), another non-governmental organization, had learned that a 12-year old girl
4 claimed she was purchased, tied up, and raped by an American teacher of English, and that the
5 perpetrator had not yet been identified.

6 Later that day, IJM director Ron Dunne told AIA Phillips that an American citizen was
7 allegedly involved in sexually abusing at least five females between the ages of 10 and 18, and
8 that one of the victims was bound and raped. Dunne also told AIA Phillips that as a result of
9 these allegations, the CNP had an American under surveillance. In addition to AIA Phillips,
10 Dunne informed the CNP of the allegations of sexual abuse.

11 On or about June 15, 2006, Dunne told AIA Phillips that CNP and the municipal police
12 in Phnom Penh, Cambodia, were conducting surveillance of the American, and that the
13 American was inside his residence with victims. Dunne also provided AIA Phillips with
14 information from an interview conducted by WHI on or about June 12, 2006 of the 12-year old
15 victim, “I.T.” In that interview, I.T. stated, among other things, that the man with whom she had
16 “sex” was known as “Michael” and was from the United States. I.T. also described “Michael’s”
17 residence and stated that “some young girls” were being tied up for the purpose of having sex
18 with “Michael.”

19 On or about June 15, 2006, Dunne told AIA Phillips that an IJM investigator had located
20 Michael Pepe’s house and that the local police were surveilling that house. Dunne also provided
21 AIA Phillips with a copy of an IJM report that related that Michael Pepe (identified in the report
22 by his date of birth and his U.S. Passport number) was involved in “sexual trafficking.”
23 According to that IJM report, I.T. stated that while she was at Pepe’s house, she was bound and
24 sexually abused. In addition, the IJM report noted that a medical examination conducted at a
25 Phnom Penh hospital showed injuries to I.T.’S vagina.

26 On or about June 16, 2006, at WHI, AIA Phillips interviewed I.T. in the presence of a
27 guardian. Also present during the interview were Dunne, United States Embassy investigator
28

1 Suos Vansak, and WHI counselors. The CNP was not present when AIA Phillips interviewed
2 I.T. AIA Phillips's purpose in interviewing I.T. was to memorialize her statements in the event
3 that there would be a prosecution in the United States. Also, if an American had harmed I.T., the
4 United States had an obligation to provide her with medical care.

5 In his capacity as an Assistant ICE Attache in Bangkok, Thailand, when AIA Phillips
6 receives information that a United States citizen may be involved in child abuse within the
7 jurisdiction of ICE Bangkok, he conducts a parallel investigation with whatever investigation is
8 being run by the local police. When, as in this case, it appears that the child victim's family was
9 involved in selling the victim to the perpetrator, a non-governmental organization becomes the
10 legal guardian and caregiver of the child victim. As part of his investigation, AIA Phillips asks
11 the non-governmental organization that has custody of the child victim for access to the child
12 victim so that he can interview the child victims without the police present. AIA Phillips's
13 investigation is parallel, not joint, with that of the local police.

14 On or about June 16, 2006, AIA Phillips met with CNP General Un Sokunthea. Dunne
15 also attended that meeting, and he gave General Un Sokunthea a copy of the IJM report
16 regarding the allegations against Michael Pepe. At that meeting, AIA Phillips informed General
17 Un Sokunthea that ICE was conducting a parallel investigation. AIA Phillips also thanked
18 General Un Sokunthea for the efforts of the CNP and he told her that if the CNP needed help, to
19 please let me know. He made those statements to be courteous, diplomatic, and respectful to
20 local law enforcement. He did not anticipate that the CNP would seek my help in its
21 investigation. The CNP did not seek my help in its investigation until after the Cambodian
22 search warrant was executed and the computer media was seized. As stated below, the CNP
23 sought ICE assistance in forensically analyzing the seized media.

24 On or about June 17, 2006, at approximately 12:40 p.m., after observing Michael Pepe
25 leave his residence and go to a tour business, the CNP arrested him for rape and debauchery in
26 violation of Cambodian law. After arresting Pepe, the CNP transported him to his residence.
27 AIA Phillips was not present when the CNP arrested Pepe. AIA Phillips learned of the arrest
28

1 from Dunne. AIA Phillips did not instruct or advise the CNP to arrest Pepe.

2 Before arresting Pepe, the CNP had obtained a search warrant for his residence. (A true
3 and correct copy of that Cambodian warrant is attached to the Declaration of Gary J. Phillips.).
4 At approximately 1:20 p.m. on June 17, 2006, the CNP began to execute the search warrant.
5 AIA Phillips did not instruct or advise the CNP to obtain a warrant to search Pepe's residence,
6 and he did not assist the CNP in obtaining the search warrant. AIA Phillips does not know the
7 process by which a search warrant is obtained under Cambodian law. It is his understanding that
8 the Cambodian prosecutor and the person whose house is being searched must be present.

9 AIA Phillips did not execute the Cambodian search warrant in Pepe's residence. AIA
10 Phillips was present as an observer when the CNP executed the Cambodian search warrant on
11 Pepe's residence. There were approximately twenty police officers searching Pepe's residence.
12 The Cambodian prosecutor and Pepe were present when the CNP executed the search. There
13 were officers searching in one room when Pepe was located in another room. During the search,
14 AIA Phillips went inside the house and followed the CNP officers. AIA Phillips saw what items
15 the CNP officers found, and he took photographs during the search for his parallel investigation.
16 At one point, the CNP officers discovered rope in the closet. When the officers told AIA Phillips
17 about the rope, he looked at it. AIA Phillips also observed many items that corroborated the
18 information provided by I.T. During the search, AIA Phillips wore gloves so that he would not
19 contaminate any of the evidence seized by the CNP.

20 On or about June 17, 2006, the CNP stopped the search. AIA Phillips does not know
21 why they stopped the search. The CNP taped the door and sealed it shut. On or about June 19,
22 2006, the CNP returned to Pepe's residence, placed the seized items into burlap bags, put the
23 bags into trucks, and drove all of the seized items to the CNP offices.

24 Among the items seized by the CNP were a computer and computer media, including a
25 flashcard, memory card, and compact disks. The CNP does not have the forensic capability to
26 analyze computer media. Because ICE has the capability to forensically analyze computer
27 media, ICE offered to assist to the CNP in its analysis of the computer and media. This is the
28

1 same assistance that ICE offers to law enforcement agencies throughout the world who lack the
2 technical resources and knowledge to analyze computers and computer media. After accepting
3 ICE'S offer of assistance, the CNP turned over the hard drive, flashcard, memory card, and
4 compact disks to AIA Phillips, who later sent those items to ICE Singapore for forensic analysis.

5 AIA Phillips believes that the search warrant obtained by the CNP for Pepe's residence
6 complied with Cambodian law, and the search was executed in accordance with Cambodian law.

7 On or about November 16, 2006, ICE in the Central District of California received a
8 number of items seized by the CNP from Michael Pepe's Cambodian residence. On or about
9 April 17, 2007, ICE Special Agent Chris Kuzma received additional media. The items that
10 Special Agents Eddy Wang and Kuzma received included one Hewlett-Packard CPU, twenty-
11 seven pornographic compact disks, thirty-one miscellaneous compact disks, and five 3.5-inch
12 floppy disks. These items had not previously been forensically examined by Special Agent
13 David Galante of the ICE Attache Office in Singapore, or anyone else. Believing that these
14 items might be evidence or an instrumentality of criminal activity, I prepared a search warrant.
15 On or about May 17, 2007, after the warrant had been approved by Assistant United States
16 Attorney Patricia Donahue, ICE Special Agent Wang presented a search warrant and affidavit to
17 the Honorable Victor B. Kenton, United States Magistrate Judge for the Central District of
18 California. After reviewing Special Agent Wang's affidavit, Magistrate Judge Kenton signed the
19 search warrant. A true and correct copy of the search warrant affidavit is attached to Special
20 Agent Wang's declaration.

21 In the search warrant affidavit, Special Agent Wang detailed some of the evidence
22 discovered by the CNP that corroborated the victims' accounts of rape and abuse by Pepe. In the
23 affidavit, Special Agent Wang also included descriptions of the images found by Special Agent
24 Galante during the forensic analysis he performed at the request of the CNP. The images in the
25 media that Special Agent Galante examined included child pornography and photographs of
26 Pepe's victims in various states of undress. However, even if ICE was unaware of this evidence
27 or was precluded from using this information, Special Agent Wang still would have sought a
28

1 search warrant for the computer media based on the nature of the crime. Based on Special Agent
2 Wang's training and experience, he knows that pedophiles often photograph their victims,
3 document and correspond with other pedophiles about their activities, and collect and store child
4 pornography. Given the possibility that evidence might exist on the media that would
5 corroborate the victims, Special Agent Wang still would have applied for a search warrant.

6 Between May 17, 2007, and July 12, 2007, ICE Computer Forensic Analyst Timothy
7 Sullivan and Special Agent Wang examined the items enumerated in the search warrant.
8 Analysis of the items revealed that approximately eleven compact disks that contained visual
9 depictions of minors. After conducting a preliminary examination of the media, Special Agent
10 Wang determined that the above disks contained evidence or an instrumentality of criminal
11 activity and needed a more detailed analysis. Because the remaining items did not contain
12 evidence or were instrumentalities of criminal activity, Special Agent Wang determined that
13 those items could be returned to Pepe. A true and correct copy of the Report of Investigation
14 documenting Special Agent Wang's findings is attached to his declaration as Exhibit B. Prior to
15 July 15, 2006, Special Agent Wang sent his findings to the United States Attorney's Office and
16 asked that the Assistant United States Attorney inform Pepe's counsel that the items that did not
17 contain visual depictions of minors could be returned to Pepe. Although the United States
18 Attorney's Office has furnished those findings to Pepe's attorneys, no one
19 acting on Pepe's behalf has picked up this media.

20 On or about July 12, 2007, Bruce Pixley, Senior Director of Aon Consulting, copied one
21 of the compact disks, and using forensic tools conducted a more detailed analysis of the compact
22 disk. That analysis included an examination of the unallocated space on the disk. In the
23 unallocated space of that compact disk, Mr. Pixley found child pornography and visual
24 depictions of minors. On or about July 25 and 26, 2007, Mr. Pixley copied the remaining
25 compact disks and conducted a similar examination. Mr. Pixley determined that at least two of
26 the compact disks that he examined contained visual depictions of minors in the unallocated
27 space.

III**ARGUMENT****A. THE FOURTH AMENDMENT DOES NOT APPLY TO THE SEARCH
CONDUCTED BY THE CAMBODIAN NATIONAL POLICE**

The Ninth Circuit has recognized the “general and undisputed proposition” that “neither our Fourth Amendment nor the judicially created exclusionary rule applies to acts of foreign officials.” United States v. Barona, 56 F.3d 1087, 1090-91 (9th Cir. 1995) (citations omitted). Thus, evidence obtained by foreign police officers from searches conducted in their own countries generally is admissible, regardless whether the search complied with the Fourth Amendment. See Stonehill v. United States, 405 F.2d 738, 743 (9th Cir. 1968) (“Neither the Fourth Amendment of the United States Constitution nor the exclusionary rule of evidence, designed to deter Federal officers from violating the Fourth Amendment, is applicable to the acts of foreign officials.”).

**B. NEITHER EXCEPTION TO THE RULE ADMITTING EVIDENCE FROM
FOREIGN SEARCHES APPLIES HERE**

There are two “very limited exceptions” to the general rule admitting evidence resulting from foreign searches and arrests. Barona, 56 F.3d at 1091. Neither exception applies in this case.

**1. The Search By The Cambodian National Police Did Not Shock The Judicial
Conscience**

The first exception, inapplicable here, “occurs if the circumstances of the foreign search and seizure are so extreme that they shock the judicial conscience, so that a federal appellate court in the exercise of its supervisory powers can require exclusion of the evidence.” Id. (citations omitted). Defendant has not alleged, nor is there any evidence, that the CNP engaged

1 in conduct that would “shock the judicial conscience.” To the contrary, in compliance with
2 Cambodian law the CNP obtained a search warrant for defendant’s Phnom Penh residence.
3 Thus, the first exception does not apply.
4

5 **2. The Search Conducted By The Cambodian National Police Was Not A “Joint**
6 **Venture” With United States Law Enforcement**

7 The second very limited exception to the rule admitting evidence resulting from foreign
8 searches applies “when United States agents’ participation in the investigation is so substantial
9 that the action is a joint venture between United States and foreign officials.” Id.; Stonehill, 405
10 F.2d at 743 (“If Federal agents [have] so substantially participated in the raids so as to convert
11 them into joint ventures between the United States and the foreign officials, then the
12 exclusionary rule may apply”).
13

14 Whether the involvement of United States agents rises to the level of substantial
15 participation is a fact-specific inquiry, with no one factor being determinative. In United States
16 v. Stonehill, 405 F.2d at 741-42, 745 (9th Cir. 1968), the Ninth Circuit found no joint venture
17 when United States officials were present during the planning of searches in the Philippines and
18 a few days after the searches they obtained some of the seized evidence. The fact that the
19 Supreme Court of the Philippines ultimately found the raid to be illegal, and that the raid would
20 also have been found to be illegal in the United States, did not render the evidence inadmissible
21 in the United States. Id. at 746. In United States v. Benedict, 647 F.2d 928, 930 (9th Cir. 1981),
22 the court found no joint venture where the search was initiated by the Thai police under Thai
23 law, a search warrant was procured under Thai law, and the Drug Enforcement Administration
24 (“DEA”) agents were invited by the Thai police to accompany them during the search because
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1 the heroin seized at the Bangkok Airport that initiated the investigation was marked for shipment
2 to the United States. In United States v. Rose, 570 F.2d 1358, 1364 (9th Cir. 1978), the Ninth
3 Circuit declined to find a joint venture where United States Customs officials did not direct or
4 request the Canadians to search the defendant's luggage, did not participate in the search, and
5 "[t]here is no evidence that United States agents were attempting to undermine the Fourth
6 Amendment rights of a citizen by circuitous and indirect methods." (citations omitted). See also
7 United States v. Maher, 645 F.2d 780, 783 (9th Cir. 1981) (no joint venture where investigation
8 was initiated and controlled by Canadian police with limited support and assistance from
9 American officials in the United States); Pfeifer v. United States Bureau of Prisons, 615 F.2d
10 873, 877 (9th Cir. 1980) (combination of treaty encouraging joint drug investigations and
11 presence of American DEA agent with visible firearm in his jacket during interrogation by
12 Mexican officials not sufficient to invoke joint venture doctrine). By contrast, in United States
13 v. Peterson, 812 F.2d 486, 490 (9th Cir. 1987), the Ninth Circuit found substantial participation
14 where the DEA agents themselves termed their actions a "joint investigation," were involved
15 daily in translating and decoding transmissions intercepted as a result of a Philippine wiretap,
16 and assumed a substantial role in the case that was not subordinate to the role of Philippine
17 authorities.²

23 ² See also United States v. Behety, 32 F.3d 503, 511 (11th Cir. 1994) (Fourth
24 Amendment inapplicable because the search and seizure were conducted primarily by
25 Guatemalan officials and the limited participation of U.S. officials did not constitute a joint
26 venture sufficient to invoke the Fourth Amendment); United States v. Marzano, 537 F.2d 257,
27 269-70 (7th Cir. 1976) (finding no joint venture where United States law enforcement officers
28 were merely present at scene of search and seizure); Birdsell v. United States, 346 F.2d 775, 782
(5th Cir. 1965) (holding although United States officers were "present and cooperating in some
degree" with local officials, there was no joint venture sufficient to invoke the protections of

1 The cases where United States participation has been deemed enough to constitute a joint
2 venture are where the evidence was obtained during an investigation that was essentially
3 initiated and carried out by the United States law enforcement in a foreign country. In this case,
4 AIA Phillips did not initiate and carry out a joint investigation with the CNP. The non-
5 governmental organizations notified both AIA Phillips and the CNP about the allegations against
6 a United States citizen in Cambodia. The CNP investigated. The CNP surveilled Pepe and his
7 residence, obtained a search warrant, arrested Pepe, executed the search warrant, and seized
8 substantial evidence corroborating the information provided by the 12-year old victim. AIA
9 Phillips also conducted his own parallel investigation. He interviewed the victim without the
10 CNP present. His investigation was not joint with that of the CNP. AIA Phillips was not present
11 when the CNP arrested Pepe for violating Cambodian law, he did not instruct or advise the CNP
12 to obtain a warrant to search Pepe's residence, he did not assist the CNP in obtaining the search
13 warrant, he did not execute the warrant, and he did not seize the evidence. The fact that he was
14 present when the CNP executed the warrant does not rise to the level of substantial participation.
15
16 See Benedict, 647 F.2d at 930-31 (presence of DEA agents at search did not render the
17 investigation joint where decision to search was made solely by Thai authorities and seizures and
18 arrest of defendant were effected in furtherance of Thai prosecution). Unlike the DEA agents in
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23 Fourth Amendment); United States v. Rosenthal, 793 F.2d 1214, 1231 (11th Cir. 1986) (no joint
24 venture where United States agents helped plan raid of defendant's residence in Colombia, were
25 present during the raid and arrest, and received all evidence obtained during the raid for use in
26 defendant's prosecution in the United States); United States v. Gecas, 120 F.3d 1419, 1433-34
27 (11th Cir. 1997) (noting that cooperation with foreign governments, including sharing of
28 information on specific cases, does not transform foreign governments into agents of the United
States.

1 Peterson, AIA Phillips's involvement was subordinate to that of the Cambodian authorities.

2 In addition, the fact that AIA Phillips met with the CNP does not establish substantial
3 participation. The United States Government enjoys close cooperation with numerous foreign
4 governments in specific areas of law enforcement activity. Many of these cooperative
5 relationships include specific obligations through treaty or agreement. There is no caselaw
6 suggesting that a meeting or general agreement to share information transform foreign law
7 enforcement authorities into agents of the United States and render all foreign activity in that
8 area a "joint venture."
9

10
11 **C. EVEN IF THE SEARCH WAS A "JOINT VENTURE" WITH UNITED STATES**
12 **LAW ENFORCEMENT, THE SEARCH WAS REASONABLE AND THE GOOD**
13 **FAITH EXCEPTION APPLIES**

14 A foreign search is lawful under the Fourth Amendment if it is "reasonable." Barona, 56
15 F.3d 1087. Reasonableness is achieved if the foreign authorities either (1) followed their own
16 law; or (2) the United States agents acted in the good faith belief that the interception was in
17 compliance with foreign law. Id. at 1091-93. In Peterson, 812 F.2d at 492, the Ninth Circuit
18 held that even if the Philippine wiretap was illegal under Philippine law, reliance on its legality
19 was objectively reasonable by the United States authorities participating in the joint narcotics
20 investigation. As the Ninth Circuit explained, "Permitting reasonable reliance on representations
21 about foreign law is a rational accommodation to the exigencies of foreign investigation." Id.
22

23 Article 20 of the "Provisions Relating to the Judiciary and Criminal Law and Procedure
24 Applicable in Cambodia During the Transitional Period, Decision of September 10, 1992,"
25 entitled "Searches", states:
26

27 In the case of flagrante delicto offenses police have the power to search.
28

1 Searches must be conducted in the presence of the suspect and two witnesses, preferably
2 neighbors or owners of the building.

3 Except in cases of flagrante delicto offenses, searches must be authorized by one of the
4 judges of the competent court or by the prosecutor. They may take place only between
5 the hours of 6:00 a.m. and 6:00 p.m. They should take place in the presence of the
6 suspect if possible, and two witnesses from among the suspect's family members. Proof
7 obtained in violation of the present article is not admissible in court.
8
9

10 Article 20, Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in
11 Cambodia During the Transitional Period.

12 A translation of the search warrant is attached as Exhibit A to Phillips' declaration. It is
13 dated June 17, 2006. As Pepe concedes, the search was conducted in Pepe's presence, in
14 accordance with Article 20. Article 20 also states that the search must be conducted in the
15 presence of two witnesses, "preferably neighbors or owners of the building." (Exhibit "I" to
16 defense suppression motion). The plain language suggests a preference, but not a requirement,
17 that the two witnesses be neighbors or owners. In this case, as the property report states, one of
18 the witnesses was a house owner, and there were ten other witnesses present. (Ex. "A" to
19 Phillips Declaration). In addition, two of defendant's victims were present at his residence at the
20 time of the search.³
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26 ³ Article 20 also states that the search "should" take place in the presence of two
27 members of the suspect's family. The only family member of defendant's of whom the
28 government is aware who was in Cambodia at the time of the search was defendant's wife.

1 In this case, even if the search was a joint venture, it appears to have been conducted in
2 compliance with Cambodian law. In addition, even if there was a technical violation of a
3 provision of Cambodian law, Assistant ICE Attache Phillips acted in good faith belief that the
4 search was legal under Cambodian law.
5

6 **D. THE SEARCH OF PEPE'S COMPUTER MEDIA IS VALID**

7 In his second suppression motion, Pepe contends that the search warrant of the computer
8 media seized by the CNP must be suppressed for a number of reasons. As set forth in detail
9 below, each of these reasons fails.
10

11 Pepe claims that the search warrant for the media discovered at his home was tainted,
12 because it contains information about what the CNP seized during the search of his Cambodian
13 residence. Although Pepe claims that the CNP'S search of his residence was "unlawful," as set
14 forth above, nothing was inappropriate about that search. Therefore, because the CNP'S search
15 of his residence was lawful, Pepe cannot move to suppress the search of the seized computer
16 media. Nevertheless, even if this Court determines that the CNP'S search was unlawful, the
17 subsequent search of the media still should not be suppressed.
18

19 The government does not dispute that "'evidence which is obtained as a direct result of
20 an illegal search and seizure may not be used to establish probable cause for a subsequent
21 search.'" United States v. Barajs-Avalos, 377 F.3d 1040, 1054 (9th Cir. 2004) (quoting United
22 States v. Wanless, 882 F.2d 1459, 1465 (9th Cir. 1989)). Nonetheless, "the mere inclusion of
23 tainted evidence in an affidavit does not, by itself, taint the warrant or the evidence seized
24 pursuant to the warrant." United States v. Heckenkamp, 482 F.3d 1142, 1149 (9th Cir. 2007)
25 (citation and quotation omitted); see United States v. Reed, 15 F.3d 928, 933 (9th Cir. 1994);
26
27
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1 United States v. Vasey, 834 F.2d 782, 788 (9th Cir.1987). Thus, “[w]hen an affidavit contains
 2 evidence illegally obtained, ‘[a] reviewing court should excise the tainted evidence and
 3 determine whether the remaining, untainted evidence would provide a neutral magistrate with
 4 probable cause to issue a warrant.’” Barajs-Avalos, 377 F.3d at 1054 (quoting Vasey, 834 F.2d
 5 at 788); see Heckenkamp, 482 F.3d at 1149. If, after excising the warrant, the reviewing court
 6 determines that there is probable cause and that the agents would have sought the warrant
 7 without the excised information, then the warrant stands. See Murray v. United States, 487 U.S.
 8 533, 542-43 (1988); United States v. Duran-Orozco, 192 F.3d 1277, 1281 (9th Cir. 1999).
 9

10 In the instant case, if the Court were to excise information in the search warrant related to
 11 the Cambodian search, it only should excise Paragraphs 12, 14, and 15 of the search warrant.⁴
 12 The paragraphs of the search warrant that remain, detail the actions of pedophile and child
 13 pornographer sufficient to establish probable cause of the complained of crimes. For example, in
 14 Paragraph 9, the affiant, Special Agent Wang describes how ICE learned that Pepe sexually
 15 abused and/or raped at least four girls:
 16

17
 18 9. Beginning on or about June 14, 2006, ICE Bangkok received information
 19 from two Non-Governmental Organizations that a U.S. citizen, later identified as
 20 PEPE, had sexually abused and raped a number of children at his compound in
 21 Phnom Penh, Cambodia. During the course of the investigation, AIA Phillips
 22 interviewed four of the child victims (between the ages of 9 and 12 years-old)
 23 who identified PEPE as the individual who sexually abused them. Based upon

24 ⁴ In his motion to suppress the computer media, Pepe suggests that the Court to
 25 excise Paragraph 13 of the search warrant. (Def.’s Mot. to Suppress Evidence Discovered as
 26 Result of Computer Media Search Warrant (“Computer Media Suppression Mot.”), at 4.) This
 27 paragraph describes how U.S. Customs and Border Protection tracked Pepe’s international
 28 travels. Given that none of this information is related to the search, this paragraph should not be
 excised.

1 their investigation, in June 2006, the Cambodian National Police ("CNP")
2 arrested PEPE⁵

3 In Paragraph 13 of the search warrant, Special Agent Wang describes how law
4 enforcement determined that Pepe traveled to Cambodia after the enactment date of the statute
5 prohibiting persons from engaging in illicit sexual conduct in foreign places.⁶
6

7 13. On July 20, 2006, U.S. Customs and Border Protection ("CBP") Officer
8 Tim Kirkham checked for PEPE'S most recent travel details through the CBP
9 computer systems that query passenger, reservation, and travel itinerary
10 information from all international flights that depart from, arrive at, or transit
11 through the U.S. According to CBP computer systems, on September 1, 2005,
12 PEPE departed Los Angeles International Airport for Manila, Philippines. On
13 September 3, 2005, PEPE departed Manila, Philippines for Phnom Penh,
14 Cambodia by way of Bangkok, Thailand.

15 In Paragraph 16 of the search warrant, Special Agent Wang details a letter that Pepe sent
16 to the United States, in which he admitted to some of the conduct at issue in this case:
17

18 16. On September 12, 2006, one of PEPE's sisters provided Special Agent
19 Carlos Ortiz and me with dozens of emails and letters received from PEPE while
20 he was incarcerated in Cambodia that mostly detailed his requests and health.
21 Also, included was a letter, written by PEPE and contained within an envelope
22 postmarked August 15, 2006 that detailed some of PEPE's actions in Cambodia.
23 The following is a summary of this letter:

24 a. PEPE mentioned several of his child victims by name⁷
25

26 ⁵ For purposes of excising the search warrant, the final sentence of Paragraph 9 was
27 truncated. The deleted portion of the sentence reads as follows: "and executed search warrants
28 at PEPE's compound in Phnom Penh, where evidence of PEPE's sexual abuse of his child
victims was seized."

⁶ The enactment date for Title 18, United States Code, Section 2423(c) is
April 30, 2003. See United States v. Clark, 435 F.3d 1100, 1109 n.13 (9th Cir. 2006), cert.
denied, ___ U.S. ___, 127 S. Ct. 2029 (2007).

⁷ Paragraph 16(a) has been excised to remove information about what was
discovered during the CNP'S search and the subsequent analysis in Singapore of the computer
hard drive. The deleted portion of the sentence reads as follows: "including one for which PEPE

1 b. PEPE stated that his daily routine usually included a massage from
2 the girls after they returned from school and another later in the evening. Further,
3 PEPE stated these massages led to "inappropriate touching, etc."

4 c. PEPE stated that on one occasion, after he was given Viagra, PEPE
5 bound a known child victim and slapped her in the face. PEPE explained that the
6 known child victim was given to him by her mother as a wife/girlfriend and
7 described both his "sex drive" and "willpower" as "very low."

8 d. PEPE admitted taking naked pictures, as SANG's request, of her
9 two nieces. Further, PEPE claimed that he erased these files from his computer.

10 These remaining portions of the search warrant affidavit establish probable cause that
11 Pepe, an American citizen in Cambodia, engaged in illicit sexual conduct in foreign places, a
12 violation of Title 18, United States Code, Section 2423(c). Several of the Pepe's victims came
13 forward and detailed how he raped and sexually abused them. Pepe admitted that he not only
14 knew at least one of his victims, but that he engaged in illicit sexual conduct with them, which
15 including "inappropriate touching" and bondage. He also suggested that he had sexual relations
16 with this minor. Finally, Pepe's admission that he took naked photographs of Sang's nieces,
17 which he stored and later deleted on his computer, established probable cause that there might be
18 digital evidence of this crime at his residence. When the Court considers the handwritten
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28 had dozens of pornographic and sexually-explicit photographs on his computer."

1 notations and titles on a number of the compact discs, probable cause for the search becomes
2 even stronger.⁸

3
4 Once probable cause is established, the only remaining issue that the Court must address
5 is whether the ICE agents would have sought the search warrant for the computer media without
6 the evidence discovered in the Cambodian search. See Murray, 487 U.S. at 542-43; Duran-
7 Orozco, 192 F.3d at 1281. In this case, Special Agent Wang, the search warrant affiant, stated in
8 his declaration that ICE would have sought a search warrant for the computer media, even if the
9 agency did not have the knowledge of the depictions of minors and child pornography recovered
10 in Singapore from Pepe's computer media. (See Decl. of Eddy Wang ("Wang Decl."), at ¶ 4.)
11 Because of the nature of the crimes, ICE would have sought a warrant for any computer media at
12 Pepe's residence to corroborate the victims' testimony. (See id.) Thus, had ICE been in
13 possession of Pepe's computer media, it would have sought the warrant.
14
15

16 Because Pepe cannot offer any evidence to refute this, other than conjecture and
17 speculation that ICE would not have sought a warrant, the warrant must stand. Consequently,
18 any computer media seized pursuant to that warrant is valid and may be introduced against Pepe
19 at trial.
20

21 **E. THE SEARCH WARRANT ESTABLISHED PROBABLE CAUSE FOR THE**
22 **MEDIA LISTED IN THE SEARCH WARRANT**

23 Pepe also takes issue with the government's desire to search all of the computer media
24 seized at his residence for evidence that he raped and abused children, and photographed his
25

26 ⁸ These titles and handwritten notes include "15 years old little girls with crazy sex
27 event," "Tender Baby," "14 Years Old Unsensor," "HOME 111605," "4 GIRLS," "HOME
28 102805," and "SKV & NEW GIRL." (See Wang. Decl., Ex. A, at ¶¶ 6(b) & 6(c)(1).)

1 victims while in Cambodia. Pepe claims that the government should not have searched any
2 media whose lacks a label or whose labels reflects that it might contain some content other than
3 child pornography. (See Computer Media Suppression Mot., at 5-6.) Pepe insists that the only
4 way that agents would be allowed to search that media is if the affidavit contained an
5 explanation of how Pepe could have disguised child pornography in such a manner. (See id.)
6 Such an assertion is not supported by the law. Moreover, it ignores the Ninth Circuit's recent
7 holding in United States v. Hill, 459 F.3d 966 (9th Cir. 2006).
8

9
10 In Hill, a child pornography case, the appellate court upheld an warrant authorizing the
11 seizure of a defendant's computer equipment. The defendant, like Pepe, claimed that "warrant
12 was overbroad because it authorized seizure of storage media whether or not they contained
13 child pornography. He suggests it should have authorized seizure only of media containing child
14 pornography." Hill, 459 F.3d at 973. The Ninth Circuit rejected this claim, recognizing that "it
15 is impossible to tell what a computer storage medium contains just by looking at it. Rather, one
16 has to examine it electronically, using a computer that is running the appropriate operating
17 system, hardware, and software." Id. Further, the Ninth Circuit held that although the search
18 warrant did not explain why the wholesale seizure of computer equipment was necessary,
19 suppression of the discovered child pornography was not appropriate. Id. at 977.
20

21
22 The search in the instant case was not a "broad sweep." Instead, the search was focused
23 on a limited set of media, enumerated and described in the affidavit. The fact that it did not
24 include a paragraph explaining how and why child pornographers, like Pepe, store and hide
25 pornography on various media, is not fatal in light of the Hill holding. Moreover, by including
26 the identifying information of the compact disks in the affidavit, the government ensured that the
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1 reviewing magistrate was aware of what the agents planned to search. Thus, when Magistrate
2 Judge Kenton issued the warrant, after considering the totality of the circumstances, he
3 determined that there was probable cause to search all of the enumerated media. Because, that
4 finding was not erroneous, the warrant must be upheld. See, e.g., United States v. Schmidt, 947
5 F.2d 362, 371 (9th Cir. 1991) (quoting United States v. McQuisten, 795 F.2d 858, 861 (9th Cir.
6 1988)) (“In doubtful cases, preference will be given to upholding the validity of [a] search
7 warrant.”); United States v. Castillo, 866 F.2d 1071, 1076 (9th Cir. 1988) (quoting McQuisten,
8 795 F.2d at 861) (“We may not reverse a magistrate’s finding of probable cause unless it is
9 clearly erroneous.”); United States v. Fannin, 817 F.2d 1379, 1381 (9th Cir. 1987) (quoting
10 United States v. Angulo-Lopez, 791 F.2d 1394, 1396 (9th Cir. 1986)) (“The magistrate’s finding
11 of a ‘substantial basis’ is given great deference.”)
12
13

14
15 **F. THE EXECUTION OF THE SEARCH WAS PROPER IN TIME AND SCOPE**

16 Pepe also suggests, without any evidence, that the search may not have been proper
17 because of the scope and timing of the execution of the warrant.

18 Pepe interprets dicta from Hill to require that the government affirmatively demonstrate
19 that “the computer search was properly limited to computer files that the searching agent could
20 reasonably believe might contain items which the search warrant allowed the agent to look for.”
21 (Computer Media Suppression Mot., at 8.) This claim fails because by the terms of the warrant,
22 the search was limited to computer media. Therefore, given the nature of the media, it is not
23 evident whether anything but computer/electronic files could have been searched. Further, by
24 trying to limit the files which the government can search, Pepe ignores the Ninth Circuit’s
25 holding in Hill. In that case, the Ninth Circuit explained the ease in which child pornographers
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1 can hide their contraband and the difficulty of searching computer media to discover the
2 evidence of their crimes:

3 Computer records are extremely susceptible to tampering, hiding, or destruction,
4 whether deliberate or inadvertent. Images can be hidden in all manner of files,
5 even word processing documents and spreadsheets. Criminals will do all they can
6 to conceal contraband, including the simple expedient of changing the names and
7 extensions of files to disguise their content from the casual observer. Forcing
8 police to limit their searches to files that the suspect has labeled in a particular
9 way would be much like saying police may not seize a plastic bag containing a
10 powdery white substance if it is labeled "flour" or "talcum powder." There is no
11 way to know what is in a file without examining its contents, just as there is no
12 sure way of separating talcum from cocaine except by testing it.

13 Id. at 978 (quotation and citation omitted).

14 Thus, limiting the search as suggested by Pepe undermines the warrant and the Ninth
15 Circuit's holding in Hill.

16 Pepe also claims that any "items" discovered after July 15, 2007, must be suppressed,
17 because "[t]he search warrant placed a sixty-day time limit on the search of the computer
18 media" (Computer Media Suppression Mot., at 9.) Without any law, Pepe opines that
19 "[s]ubsequent searches of other items, unless within the sixty-day search period (which would
20 have ended on July 15, 2007), would not have been authorized by the search warrant and so any
21 evidence found in such subsequent searches would be product of a warrantless search." (Id.)
22 However, it is not clear what Pepe hopes to suppress. In fact, Pepe concedes that whether such
23 evidence actually exists is no more than pure speculation. (Id. n.3.) Nonetheless, if Pepe
24 suggests that the government could not search the seized media after the sixty-day period set
25 forth in the warrant, his motion must be denied.

26 In the instant case, the search warrant for the computer media dictates how the those
27
28

1 items must be searched:

2 The ITEMS TO BE SEARCHED are already in the possession of United States
3 Immigration and Customs Enforcement in the Central District of California.
4 Consistent with the requirements of Rule 41, the ITEMS TO BE SEARCHED
5 will be delivered to computer forensic technicians within 10 days of the effective
6 date of this warrant to commence the search. For the reasons noted in paragraph
7 19 of the Affidavit, the search will not be completed during the 10-day period.
8 However, the ITEMS TO BE SEARCHED will be preliminarily examined to
9 determine whether they contain any evidence or are an instrumentality of the
10 crime, within 60 days. If the computer forensic technicians determine that the
11 data does not fall within any of the items to be seized pursuant to this warrant or
12 is not otherwise legally seized, the government will return these items within a
13 reasonable period of time not to exceed 60 days from the date of execution of the
14 warrant. If the government needs additional time to determine whether the data
15 of the items to be seized pursuant to this warrant, it must obtain an extension of
16 the time period from the Court within the original sixty day period.

17 (Wang Decl., Ex. A, at 5-6 (emphasis added).) Contrary to Pepe's assertion, further analysis of
18 the computer media need not be completed within sixty days. Instead, the government only
19 needs to conduct a "preliminary examin[ation] to determine whether they contain any evidence
20 or are an instrumentality of the crime, within 60 days." (*Id.*)

21 In this case, the ICE agents' preliminary examination of the media occurred between
22 May 17, 2007, and July 12, 2007. (*See* Wang Decl., at ¶ 5.) During that time period, the ICE
23 agents determined that only eleven of the seized compact disks contained evidence or were an
24 instrumentality of a crime. (*See id.*) The government informed defense counsel that they could
25 retrieve all of the computer media, except those disks that contained visual depictions of minors.
26 (*See id.*) After fulfilling its obligations under the warrant, on July 12, 25, and 26, the
27 government conducted a more detailed analysis of the disks that disks contained visual
28 depictions of minors – evidence or an instrumentality of a crime. (*See id.* at ¶ 6.)

1 To the extent that Pepe complains that items discovered during the detailed analysis of
2 the disks must be suppressed simply because the analysis took place after July 15, 2007, his
3 motion must fail. "Neither [Federal Rule of Criminal Procedure 41] nor the Fourth Amendment
4 provides for a specific time limit in which a computer may undergo a government forensic
5 examination after it has been seized pursuant to a search warrant." United States v. Hernandez,
6 183 F. Supp. 2d 468, 480 (D.P.R. 2002). Asking the Court to limit the government ability to
7 conduct additional analysis of computer media seized pursuant to a search warrant is the same as
8 asking the Court to prohibit the government to review documents also seized by a search warrant
9 after the initial review. See, e.g., United States v. Habershaw, No. CR. 01-10195-PBS, 2002 WL
10 33003434, *8 (D. Mass. May 13, 2002) ("Further forensic analysis of the seized hard drive
11 image does not constitute a second execution of the warrant or a failure to 'depart the premises' .
12 . . any more than would a review of a file cabinet's worth of seized documents."); Hernandez,
13 183 F. Supp. 2d at 480 ("In most cases the forensic examination of the computer will take place
14 at a different location than where the computer was seized. The same principle applies when a
15 search warrant is performed for documents. The documents are seized within the time frame
16 established in the warrant but examination of these documents may take a longer time, and
17 extensions or additional warrants are not required. The examination of these items at a later date
18 does not make the evidence suppressible."). Such a proposition is absurd, unfounded in law, and
19 been rejected by other courts. See Habershaw, 2002 WL 33003434, at *8 (denying defendant's
20 motion to suppress evidence discovered fourteen days after issuance of search warrant);
21 Hernandez, 183 F. Supp. 2d at 480 ("We find that it was perfectly reasonable for the
22 Government to take a longer time to search and inspect the images in the floppy drives,
23
24
25
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1 particularly after already having discovered child pornography in Defendant's hard disk.

2 Therefore, the evidence recovered will not be suppressed.").

3
4 The government has not, nor does it intend to at this time, to reexamine those compact
5 disks that do not contain visual depictions of minors. Should the government wish to reexamine
6 those disks, it will seek a new search warrant. Because there appears to be nothing to which
7 Pepe can object, his suppression motion should be denied.

8
9 **IV**

10 **CONCLUSION**

11 For the foregoing reasons, the government respectfully requests that defendant's motions
12 to suppress be denied

DECLARATION OF GARY J. PHILLIPS

I, Gary J. Phillips, hereby declare:

1. I have been employed with the United States Customs Service, now known as United States Immigration and Customs Enforcement ("ICE"), since November 1988. For approximately 14 years, I was a Special Agent in the San Diego Office of the Special Agent-in-Charge, where I investigated and/or participated in over ten child exploitation investigations. Since May 2002, I have been assigned to ICE Bangkok, where I have participated in over 70 child exploitation cases. During my current assignment, I have investigated several cases charging Americans with violations of Title 18, United States Code, Section 2423(c) (Engaging in Illicit Sexual Conduct in Foreign Places), including United States v. Michael Lewis Clark (Case No. CR03-0406L) in the Western District of Washington and United States v. Kent Frank (Case No. 04-20778-CR-JORDAN) in the Southern District of Florida. I am an Assistant ICE Attache. In that position, I am responsible for investigating a wide variety of criminal activity, including but not limited to, crimes against children, human trafficking and smuggling, terrorism, counter-terrorism, drug trafficking, and money laundering.

2. This declaration is made in support of the government's consolidated opposition to Defendant's Motions (1) To Suppress Evidence and (2) To Suppress Evidence Discovered As A Result of

1 Computer Search Warrant.

2 3. On or about June 14, 2006, the United States Embassy in
3 Cambodia (the "Embassy") informed me that the Embassy had
4 received the following information from World Hope International
5 ("WHI"), a non-governmental organization: The International
6 Justice Mission ("IJM"), another non-governmental organization,
7 had learned that a 12-year old girl claimed she was purchased,
8 tied up, and raped by an American teacher of English, and that
9 the perpetrator had not yet been identified.
10

11 4. Later that day, IJM director Ron Dunne told me that an
12 American citizen was allegedly involved in sexually abusing at
13 least five females between the ages of 10 and 18, and that one of
14 the victims was bound and raped. Dunne also told me that as a
15 result of these allegations, the Cambodian National Police
16 ("CNP") had an American under surveillance. In addition to me,
17 Dunne informed the CNP of the allegations of sexual abuse.
18

19 5. On or about June 15, 2006, Dunne told me that CNP and
20 the municipal police in Phnom Penh, Cambodia, were conducting
21 surveillance of the American, and that the American was inside
22 his residence with victims. Dunne also provided me with
23 information from an interview conducted by WHI on or about June
24 12, 2006 of the 12-year old victim, "I.T." In that interview,
25 I.T. stated, among other things, that the man with whom she had
26 "sex" was known as "Michael" and was from the United States.
27
28

1 I.T. also described "Michael's" residence and stated that "some
2 young girls" were being tied up for the purpose of having sex
3 with "Michael."

4 6. On or about June 15, 2006, Dunne told me that an IJM
5 investigator had located Michael Pepe's house and that the local
6 police were surveilling that house. Dunne also provided me with
7 a copy of an IJM report that related that Michael Pepe
8 (identified in the report by his date of birth and his U.S.
9 Passport number) was involved in "sexual trafficking." According
10 to that IJM report, I.T. stated that while she was at Pepe's
11 house, she was bound and sexually abused. In addition, the IJM
12 report noted that a medical examination conducted at a Phnom Penh
13 hospital showed injuries to I.T.'s vagina.
14

15 7. On or about June 16, 2006, at WHI, I interviewed I.T.
16 in the presence of a guardian. Also present during the interview
17 were Dunne, United States Embassy investigator Suos Vansak, and
18 WHI counselors. The CNP was not present when I interviewed I.T.
19 My purpose in interviewing I.T. was to memorialize her statements
20 in the event that there would be a prosecution in the United
21 States. Also, if an American had harmed I.T., the United States
22 had an obligation to provide her with medical care.
23

24 8. In my capacity as an Assistant ICE Attache in Bangkok,
25 Thailand, when I receive information that a United States citizen
26 may be involved in child abuse within the jurisdiction of ICE
27
28

1 Bangkok, I conduct a parallel investigation with whatever
2 investigation is being run by the local police. When, as in this
3 case, it appears that the child victim's family was involved in
4 selling the victim to the perpetrator, a non-governmental
5 organization becomes the legal guardian and caregiver of the
6 child victim. As part of my investigation, I ask the non-
7 governmental organization that has custody of the child victim
8 for access to the child victim so that I can interview the child
9 victims without the police present. My investigation is
10 parallel, not joint, with that of the local police.
11

12 9. On or about June 16, 2006, I met with CNP General Un
13 Sokunthea. Dunne also attended that meeting, and he gave General
14 Un Sokunthea a copy of the IJM report regarding the allegations
15 against Michael Pepe. At that meeting, I informed General Un
16 Sokunthea that ICE was conducting a parallel investigation. I
17 also thanked General Un Sokunthea for the efforts of the CNP and
18 I told her that if the CNP needed help, to please let me know. I
19 made those statements to be courteous, diplomatic, and respectful
20 to local law enforcement. I did not anticipate that the CNP
21 would seek my help in its investigation. The CNP did not seek my
22 help in its investigation until after the Cambodian search
23 warrant was executed and the computer media was seized. As
24 stated below, the CNP sought ICE assistance in forensically
25 analyzing the seized media.
26
27
28

1 10. On or about June 17, 2006, at approximately 12:40 p.m.,
2 after observing Michael Pepe leave his residence and go to a tour
3 business, the CNP arrested him for rape and debauchery in
4 violation of Cambodian law. After arresting Pepe, the CNP
5 transported him to his residence. I was not present when the CNP
6 arrested Pepe. I learned of the arrest from Dunne. I did not
7 instruct or advise the CNP to arrest Pepe.
8

9 11. Before arresting Pepe, the CNP had obtained a search
10 warrant for his residence. True and correct copies of the
11 translated Cambodian warrant and residential search report are
12 attached hereto as Exhibit A. At approximately 1:20 p.m. on June
13 17, 2006, the CNP began to execute the search warrant.
14

15 12. I did not instruct or advise the CNP to obtain a
16 warrant to search Pepe's residence, and I did not assist the CNP
17 in obtaining the search warrant. I do not know the process by
18 which a search warrant is obtained under Cambodian law. It is my
19 understanding that the Cambodian prosecutor and the person whose
20 house is being searched must be present.
21

22 13. I did not execute the Cambodian search warrant in
23 Pepe's residence. However, I was present as an observer when the
24 CNP executed the Cambodian search warrant on Pepe's residence.
25 There were approximately twenty police officers searching Pepe's
26 residence. The Cambodian prosecutor and Pepe were present when
27 the CNP executed the search. There were officers searching in
28

1 one room when Pepe was located in another room. During the
2 search, I went inside the house and followed the CNP officers. I
3 saw what items the CNP officers found and I took photographs
4 during the search for my parallel investigation. At one point,
5 the CNP officers discovered rope in the closet. When the
6 officers told me about the rope, I looked at it. I also observed
7 many items that corroborated the information provided by I.T.
8 During the search, I wore gloves so that I would not contaminate
9 any of the evidence seized by the CNP.
10

11 14. On or about June 17, 2006, the CNP stopped the search.
12 I do not know why they stopped the search. The CNP taped the
13 door and sealed it shut. On or about June 19, 2006, the CNP
14 returned to Pepe's residence, placed the seized items into burlap
15 bags, put the bags into trucks, and drove all of the seized items
16 to the CNP offices.
17

18 15. Among the items seized by the CNP were a computer and
19 computer media, including a flashcard, memory card, and compact
20 disks. The CNP does not have the forensic capability to analyze
21 computer media. Because ICE has the capability to forensically
22 analyze computer media, ICE offered to assist to the CNP in its
23 analysis of the computer and media. This is the same assistance
24 that ICE offers to law enforcement agencies throughout the world
25 who lack the technical resources and knowledge to analyze
26 computers and computer media. After accepting ICE'S offer of
27
28

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assistance, the CNP turned over the hard drive, flashcard, memory card, and compact disks to me. I later sent those items to ICE Singapore for forensic analysis.

16. To my knowledge, the search warrant obtained by the CNP for Pepe's residence complied with Cambodian law, and the search was executed in accordance with Cambodian law.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 23 day of August, 2007, at Bangkok, Thailand.


GARY J. PHILLIPS

The Kingdom of Cambodia
Nation Religion King

Phnom Penh Municipal Court

Number 103 A.Y.Kh.

Residential Search Warrant

I, Nget Sarat, the District Attorney assigned to the Phnom Penh Municipal Court
-having seen the laws regarding the appointment and function of the Courthouse of the
State of Cambodia, which was promulgated by Decree number 06 Kr., dated 08 February 1993.
-having seen the law regarding criminal legal procedure, which was promulgated by Decree
number 21, dated 08 March 1993.
-having seen report number 449/06 R.M.K., dated 17 June 2006 [illegible] case of human
sexual commerce in the residence at Number 83, Road 596, Subdistrict Boeng Kak II, District
Tuol Kork, City of Phnom Penh, resided in by Michael Joseph, nationality American.

Do hereby judge that: To free the victims and suppress the above-mentioned acts, there should be a
search made of the residence at Number 83, Road 596, Subdistrict Boeng Kak II, District Tuol
Kork, City of Phnom Penh

It Is Therefore Decided

To search the residence at number 83, Road 596, Subdistrict Boeng Kak II, District Tuol
Kork, City of Phnom Penh, with a resident named Michael Joseph.

.....to search for evidence to support the above-mentioned criminal matter.

Phnom Penh, 17 June 2006

District Attorney

[stamp]

[signature]

EXHIBIT A

**Kingdom of Cambodia
Nation Religion King**

Residential Search Report

Year two-thousand six, month of June, day seventeen, at twelve o'clock, at the residence at Number 83, Road 596, Subdistrict Boeng Kak II, District Tuol Kork, City of Phnom Penh.

I, Nget Sarat, District Attorney of the Phnom Penh Municipal Court, with Mr. Huot Chhuor, clerk [illegible] leading the combined force to search the above residence, in connection with the case of debauchery committed upon children, with a composition of participants as follows:

- | | |
|------------|---|
| gnature] | 1- Mr. Chhan Vuth Deputy Officer of the Department of Human Trafficking Prevention of the Ministry of Interior. |
| gnature] | 2- Mr. Hin Sophal, Deputy Chief of the Department of Human Trafficking Prevention of the Ministry of Interior |
| gnature] | 3- Mr. Iem Rotana, Deputy Chief of the Department of Human Trafficking Prevention of the Ministry of Interior |
| gnature] | 4- Mr. Chin Da, Deputy Chief of the Department of Human Trafficking Prevention of the Ministry of Interior |
| numbprint] | 5- Phlong Hephi, District Deputy Inspector |
| gnature] | 6- Mr. Khat Khon Tit, Chief of Post of Boeng Kak II |
| | 7- Mr. Andy Simpson, embassy representative |
| | 8- Mr. Ron Dunne, representative of the NGO IJM. |
| | 9- Mr. Gary Phillips, representative of the American FBI |
| | 10- Mrs. Sin Samna, house owner |
| | 11- Mr. Van Saret, Subdistrict Chief. [signature] |

When we [illegible] arrived at the above residence, entered and took *Michael Joseph Pepe*, male, American, [illegible] performed a search of his residence, in connection with debauchery committed upon children, having [illegible] residential search warrant, allowing Michael Joseph Pepe and the committee participate and [illegible] we entered and searched, seeing:

L.K.

1. Young girl named [redacted] age 11, [from Svay Rieng province.
2. Song Vy, female, age 20, from Prey Veng province.
- [signature] 3. 43 pornographic CD's [illegible] – one diary
4. Three pornographic sex photographs
- [signature] 5. Cambodian Passport, number 310061 belonging to Pet Chan Ry, female – driver's license number E0383375.
- [signature] -document number 28714422, Pepe, Michael J.
- document number [redacted] 4-document number 04099L28117
- [signature] -document number 6234071, dated 2-12-04.
6. 36 photo albums – one computer (computer brand Compaq – CPU brand [illegible], printer brand *hp.*)
- [signature] 7. A quantity of girls' clothing – bank book number 322112-100-226-003070-8.
- [signature] 8. White Nylon rope, length approximately two meters – White nylon rope approximately 04 meters long.
- [signature] 9. One cell phone, brand Nokia 3310
10. American dollars in the amount of \$300 (three hundred U.S. Dollars) – Baht in the amount of 3140B (three thousand one hundred forty Baht) – Cambodian money in the amount of 100,000

[thumbprint] Riel

Samna

35

(one hundred thousand Riel) – American one-dollar bills in the amount of \$95 (ninety five U.S. Dollars).

As for the above materials, we decided to turn them over to the representatives of the Department of Human Trafficking Prevention of the Ministry of Interior to control temporarily, and which we also decided to detain 05 individuals, named Thach Thing [sic], female, age 55; [REDACTED], male, age 14; [REDACTED], female, age 11; Song Vy, female, age 20; and Michael Joseph Pepe; and turn them over to the control of the Department of Human Trafficking Prevention of the Ministry of Interior for questioning. As for the residence at Number 83, Road 596, Subdistrict Boeng Kak II, District Tuol Kork, City of Phnom Penh, the committee decided to turn it over to the owner and the post authorities to control temporarily.

Aside from the above materials, we did not confiscate anything else.

This record was completed at the time of fifteen hours on the same date, and also [illegible] record for Michael Joseph Pepe and the observing committee and agreed to supply thumbprint(s) and sign with us.

[signature]
Nget Sarat

Recorded By
Clerk
[signature]
Huot Chhuor

[signature]

[signature]
Chin Da

[thumbprint]
Sin Samna

[signature]

[signature]
hlong Hephi

[signature]
Iem Rotana

[signature]

[thumbprint]
Sin Samna

DECLARATION OF EDDY WANG

I, Eddy Wang, hereby declare:

1. I am a Special Agent with the United States Department of Homeland Security, U.S. Immigrations and Customs Enforcement. ("ICE"), and have been so employed since March of 2003. I previously was employed with the Immigration and Naturalization Service as both a Special Agent and Immigration Enforcement Agent since July of 1998. I currently am assigned to the Public Safety/Smuggling Group of the Ventura County Office of the Resident Agent-in-Charge. In this capacity, I have attended training in the area of child exploitation and have investigated two other child exploitation cases.

2. This declaration is made in support of the government's consolidated opposition to Defendant's Motions (1) To Suppress Evidence and (2) To Suppress Evidence Discovered As A Result of Computer Search Warrant.

3. On or about November 16, 2006, ICE in the Central District of California received a number of items seized by the Cambodian National Police from Michael Pepe's Cambodian residence. On or about April 17, 2007, ICE Special Agent Chris Kuzma received additional media. The items that Special Agent Kuzma and I received included one Hewlett-Packard CPU, twenty-seven pornographic compact disks, thirty-one miscellaneous compact disks, and five 3.5-inch floppy disks. These items had not previously been forensically examined by ICE Special Agent

David Galante of the ICE Attache Office in Singapore, or anyone else. Believing that these items might be evidence or an instrumentality of criminal activity, I prepared a search warrant. On or about May 17, 2007, after the warrant had been approved by Assistant United States Attorney Patricia Donahue, I presented a search warrant and affidavit to the Honorable Victor B. Kenton, United States Magistrate Judge for the Central District of California. After reviewing my affidavit, Magistrate Judge Kenton signed the search warrant. A true and correct copy of the search warrant affidavit is attached hereto as Exhibit A.

4. In the search warrant affidavit, I detailed some of the evidence discovered by the Cambodian National Police that corroborated the victims' accounts of rape and abuse by Pepe. In the affidavit, I also included descriptions of the images found by Special Agent Galante during the forensic analysis he performed at the request of the Cambodian National Police. The images in the media that Special Agent Galante examined included child pornography and photographs of Pepe's victims in various states of undress. However, even if ICE was unaware of this evidence or was precluded from using this information, I still would have sought a search warrant for the computer media based on the nature of the crime. Based on my training and experience, I know that pedophiles often photograph their victims, document and correspond with other pedophiles about their activities, and

collect and store child pornography. Given the possibility that evidence might exist on the media that would corroborate the victims, I still would have applied for a search warrant.

5. Between May 17, 2007, and July 12, 2007, ICE Computer Forensic Analyst Timothy Sullivan and I examined the items enumerated in the search warrant. Analysis of the items revealed that approximately eleven compact disks that contained visual depictions of minors. After conducting a preliminary examination of the media, I determined that the above disks contained evidence or an instrumentality of criminal activity and needed a more detailed analysis. Because the remaining items did not contain evidence or were instrumentalities of criminal activity, I determined that those items could be returned to Pepe. A true and correct copy of the Report of Investigation documenting my findings is attached hereto as Exhibit B. Prior to July 15, 2006, I sent my findings to AUSA Donahue and asked that she inform Pepe's counsel that the items that did not contain visual depictions of minors could be returned to Pepe. Although I understand that the United States Attorney's Office has furnished my findings to Pepe's attorneys, no one acting on Pepe's behalf has picked up this media.

6. On or about July 12, 2007, Bruce Pixley, Senior Director of Aon Consulting, copied one of the compact disks, and using forensic tools conducted a more detailed analysis of the

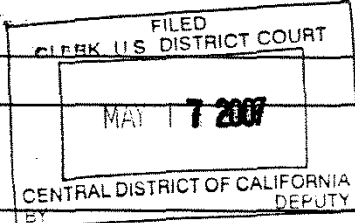

compact disk. That analysis included an examination of the unallocated space on the disk. In the unallocated space of that compact disk, Mr. Pixley found child pornography and visual depictions of minors. On or about July 25 and 26, 2007, Mr. Pixley copied the remaining compact disks and conducted a similar examination. Mr. Pixley determined that at least two of the compact disks that he examined contained visual depictions of minors in the unallocated space.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 22nd day of August, 2007, at Los Angeles, California.


EDDY WANG

AFFIDAVIT FOR SEARCH WARRANT

UNITED STATES DISTRICT COURT		DISTRICT CENTRAL DISTRICT OF CALIFORNIA
UNITED STATES OF AMERICA vs.		DOCKET NO. 07-0731M MAGISTRATE CASE NO.
THE PREMISES KNOWN AS: Computer media that was seized in June 2006 from the Cambodia residence of U.S. citizen Michael J. Pepe, that is currently in the custody of United States Immigration and Customs Enforcement in Los Angeles, California, and that is specifically described in Attachment A		NAME AND ADDRESS OF JUDGE OR U.S. MAGISTRATE JUDGE HONORABLE VICTOR B. KENTON UNITED STATES MAGISTRATE JUDGE LOS ANGELES, CALIFORNIA
The undersigned being duly sworn deposes and says: That there is reason to believe that		
<input type="checkbox"/> on the person of <input checked="" type="checkbox"/> on the premises known as		DISTRICT CENTRAL DISTRICT OF CALIFORNIA
SEE ATTACHMENT A		
The following property (or person) is concealed:		
SEE ATTACHMENT B		
It alleges the following grounds for search and seizure:		
Evidence of violations of Title 18, United States Code, Section 2423(c), Engaging in Illicit Sexual Conduct in Foreign Places, and Title 18, United States Code, Section 2260, Production of Sexually Explicit Depictions of Minor for Importation into the United States.		
See attached affidavit which is incorporated as part of this affidavit for search warrant		
Affiant states the following facts establishing the foregoing grounds for issuance of a Search Warrant		
SEE ATTACHED AFFIDAVIT WHICH IS INCORPORATED AS PART OF THIS AFFIDAVIT FOR SEARCH WARRANT)		
SIGNATURE OF AFFIANT BODDY WANG		OFFICIAL TITLE, IF ANY SPECIAL AGENT - DHS, Immigration and Customs Enforcement
Sworn to before me, and subscribed in my presence:		
 MAY 17, 2007		JUDGE OR US MAGISTRATE JUDGE VICTOR B. KENTON HONORABLE VICTOR B. KENTON

Search is to be authorized "at any time in the day or night" pursuant to Federal Rules of Criminal Procedure 41(c), show reasonable cause therefor
United States Judge or Judge of a State Court of Record

Orig

EXHIBIT A

41
00919

ATTACHMENT A

ITEMS TO BE SEARCHED

The items listed below, all of which were found and seized during a June 2006 search warrant executed by the Cambodian National Police at the Phnom Penh, Cambodia residence of a United States citizen, MICHAEL JOSEPH PEPE. All of the items listed below are currently in the custody of United States Immigration and Customs Enforcement in the Central District of California :

1. An off-white, Hewlett Packard computer tower bearing serial number, US01811010.
2. Twenty-seven (27) pornographic Compact Discs ("CD"), with titles and markings that included: "15 years old little girls with crazy sex event", "Japanese Girls", "animal instinct 4: Animal World", "Tender Baby", and "14 Years Old Unsensor".
3. The following thirty-one (31) miscellaneous CD's:
 1. A CD with red markings that read "TDK", "CD-RW80", "HIGH SPEED", and "700MB". This CD was found in a jewel case, which had an insert with handwritten notes in blue ink that read "HOME 111605", "4 GIRLS", "HOME 102805", "SKV & NEW GIRL". The following handwritten notes in blue ink had been crossed out: "HOME GIRLS 112605", "HOME GIRLS AUG4", "KIA", "NAP & KIA 1", "NAP & KIA 2", "NI 2", "NI 102905", and "HOME GIRLS AUG4 016".
 2. A CD with markings that read "princo", "Rewritable", "CD-RW", "80min. 700MB", "High Speed", "4x-12x", and "Contents:". This CD's "Contents:" were handwritten and listed as "VARIOUS VILLAGES & CHANRY".
 3. A CD with red markings that read "TDK", "CD-RW80", "HIGH SPEED", and "700MB". This CD had handwritten markings that read "VILLAGES" and "SOCRATES

FOUNDATION". This CD was found in a jewel case, which had an insert with handwritten notes in blue ink that read "SOCRATES FOUNDATION", "AREY KSAYH", "CULTURAL ORPH", "MONK FUNERAL", "OLD VILLAGE", "PURSAT 103005", "REAM 071405", and "REAM 2".

4. A CD with red markings that read "TDK", "CD-RW80", "HIGH SPEED", and "700MB". This CD had blue handwritten markings that read "MP".

5. A CD with markings that read "SONY", "CD-R", and "700MB". This CD had blue handwritten markings that read "DATA & PIC".

6. A CD with markings that read "maxell", "CD-R", and "700 MB". This CD had blue handwritten markings that read "PARTY", "PARTY 2", "PARTY USA".

7. A CD with red markings that read "TDK", "CD-RW80", "HIGH SPEED", and "700MB". This CD had handwritten markings that read "CHANRY". This CD was found in a jewel case, which had an insert with handwritten notes in blue ink that read "CHANRY", "BATTENBANG TRIP", "CHANRY", and "CHANRY ID".

8. A CD with markings that read "maxell", "XL-II 80", and "Music PRO". This CD was found in a jewel case, which had an insert with handwritten notes read "Suslainabale village", "25/12/04", and "Mr. Milchaek pepe".

9. A CD with markings that read "SAMSUNG" and "48x". This CD had handwritten markings that read "BRETT's PARTY" and "REAM".

10. A CD with markings that read "SONY", "DVD-RW", and "120min/4.7GB".

11. A CD with markings that read "maxell", "XL-II 80", and "Music PRO". This CD had black handwritten markings that read "school supply and village." and "class. 2004.oct.9".

This CD was found in a jewel case, which had an insert with handwritten notes read "VARIOUS UNKNOWN PROGRAMS".

12. A CD with red markings that read "TDK", "CD-RW80", "HIGH SPEED", and "700MB". This CD had handwritten markings that read "MISC. FUNCTIONS". This CD was found in a jewel case, which had an insert with handwritten notes in blue ink that read "BAT HOUSE", "BRETT's PARTY JULY 2005", "BETTS PARTY JULY 2005", "CLASS GROUP", "'HONG's PARTY", "HOUSE 061605", "PARTY", "PARTY 2", and "USA & PARTY".

13. A CD with markings that read "maxell", "CD-R", and "700 MB". This CD had markings that read "DR. LY".

14. A CD with markings that read "maxell", "CD-R", and "700 MB". This CD had blue markings that read "SCH. & WEDDING".

15. A CD with markings that read "SONY", "CD-RW", "CD ReWritable", "CD-RW650", and "650MB". This CD was found in a jewel case, which had an insert with handwritten notes in blue ink that read "GIRLS NOW", "MOM", "MOMS", "SCHOOL PARTY", "GIRLS 012206", "SCH GIRLS", "2006-01", "VALENTINE GIRLS", "CHRISTMAS 1", "CHRISTMAS 2005", and "GIRLS 121005".

16. A CD with markings that read "SONY", "CD-R", and "700MB". This CD had red markings that read "NARY ALBUM".

17. A CD with markings that read "SONY", "CD-R", and "700MB". This CD had blue handwritten markings that read "MED. INFO."

18. A CD with markings that read "SONY", "CD-R", and "700MB". This CD was found in a jewel case, which had a blue insert with an orange circle displayed.

19. A CD with markings that read "webroot" and "Spy Sweeper".

20. A CD with markings that read "WEB BUILDER", "over 150 Tools & Tips to Build Better & Faster WEB SITES".
21. A CD with markings that read "Norton", "2002", and "Internet Security".
22. A green CD with markings that read "CD" and "Windowsxp".
23. A blue CD with markings that read "Software, Videos & Games" and "Windowsxp".
24. A CD with has blue markings that read "VCD-" and "VOL-217".
25. A CD with black markings that read "Sustainable Village Organization" and "VCD". This CD was found in a jewel case, which had an insert with a photograph of PEPE standing with several children.
26. A purple and white CD with markings that read "SAMSUNG CD-RW" and "User's Guide".
27. A red CD with markings that read "The Essential SIMON & GARFUNKEL".
28. A CD with markings that read "A Midsummer Nightis Dream", "Master", and "ISRC CN H09-99-443-00/A J6".
29. A CD with black markings that read "BEST CLASSICS". This CD was found in a jewel case, which had a red insert with markings that read "CLASSICAL MUSIC" and "BEST CLASSICS".
30. A CD with markings that read "MASTERS OF CLASSICAL MUSIC", "BACH", "BRANDENBERG CONCERTO NO.1", and "VIOLN CONCERTO IN E MAJOR".
31. A pink CD with markings that read "COLLECTOR'S EDITIO", "251", and "eGames".
4. The following five (5) 3.5-inch floppy disks:

1. A black Sony disk with a white label. This label has handwritten markings that read "CAMBODIA", "NAA", and "DRAFT PAPER".
2. A green maxell disk with a white label. This label has handwritten markings that read "PERSONAL".
3. A green maxell disk with a white label. This label has handwritten markings that read "CULTURAL ANTHROPOLOGY" and "ENGLISH". This label also has a handwritten note that was crossed out that reads "FINANCIAL MANAGEMENT".
4. A green maxell disk with a white label. The label has handwritten markings that read "MANAGEMENT PRINCIPLES".
5. A blue maxell disk.

IV. TIMING OF SEARCH

The ITEMS TO BE SEARCHED are already in the possession of United States Immigration and Customs Enforcement in the Central District of California. Consistent with the requirements of Rule 41, the ITEMS TO BE SEARCHED will be delivered to computer forensic technicians within 10 days of the effective date of this warrant to commence the search. For the reasons noted in paragraph 19 of the Affidavit, the search will not be completed during the 10-day period. However, the ITEMS TO BE SEARCHED will be preliminarily examined to determine whether they contain any evidence or are an instrumentality of a crime, within 60 days. If the computer forensic technicians determine that the data does not fall within any of the items to be seized pursuant to this warrant or is not otherwise legally seized, the government will return these items within a reasonable period of time not to exceed 60 days from the date of execution of the warrant. If the government needs additional time to determine whether the data

of the items to be seized pursuant to this warrant, it must obtain an extension of the time period from the Court within the original sixty day period

ATTACHMENT B
ITEMS TO BE SEIZED

1. Visual depictions of I.T., L.K., S.S., S.R.
2. Visual depictions of minors, including all visual depictions of minors located at the Cambodia residence of Michael Pepe.
3. Visual depictions of minors engaging in sexually explicit conduct.
4. Correspondence pertaining to the possession, receipt, distribution and/or reproduction of child pornography.
5. Material containing names, addresses, and contact information for any minor visually depicted while engaged in sexually explicit conduct.
6. Material containing child erotica, which are materials that are sexually arousing to individuals who are sexually interested in minors, but which are not in and of themselves obscene and which do not necessarily depict minors in sexually explicit conduct. Child erotica are written materials dealing with sex education, child pornography, sexual abuse of children, incest, child prostitution, missing children, investigative techniques of child exploitation, sexual disorders, pedophilia, man-boy love, nudist publications, diaries, and fantasy writings.
7. As used herein, the terms visual depictions, material, files, records, programs, or correspondence includes visual depictions, material, files, records, programs, or correspondence created, modified or stored in any form including electronically.

AFFIDAVIT

I, EDDY WANG, being duly sworn, do hereby depose and state:

I. INTRODUCTION

1. I am a Special Agent ("SA") with the United States Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE") and have been so employed since March of 2003. I was previously employed with the Immigration and Naturalization Service ("INS") as both a Special Agent and Immigration Enforcement Agent since July of 1998. I am currently assigned to the Public Safety/Smuggling Group of the Ventura County Office of the Resident Agent-in-Charge ("RAC").

2. This affidavit is made in support of a warrant to search for evidence of violations of Title 18, United States Code, Section 2423(c), Engaging in Illicit Sexual Conduct in Foreign Places, and and Title 18, United States Code, Section 2260, Production of Sexually Explicit Depictions of a Minor for Importation into the United States, specifically the items to be seized described in paragraph 7 below, from the items to be searched described in paragraph 6 below.

3. To the extent that any information in this affidavit is not within my personal knowledge, it was made known to me through reliable law enforcement sources, and I believe it to be true. In particular, I have spoken to Gary Phillips, the Assistant ICE Attaché ("AIA") of the ICE Attaché Office in Bangkok, Thailand ("ICE Bangkok"), and SA David Galante, of the ICE Attaché Office in Singapore ("ICE Singapore"), who are both familiar with the investigation described below.

a. AIA Gary Phillips has been employed with the United States Customs Service, now known as ICE, for over 17 years. For approximately 14 years, AIA Phillips had been assigned as a Special Agent to the San Diego Office of the Special Agent-in-Charge, where

he has investigated and/or participated in over ten child exploitation investigations. Since May of 2002, AIA Phillips has been assigned to ICE Bangkok, where he has participated in over 30 child exploitation cases. ICE Bangkok is responsible for investigating leads relating to violations of U.S. immigration and customs laws in the Southeast Asian-region.

b. SA David Galante has been employed with the United States Customs Service, now known as ICE, for 14 years and has been assigned to the Office of Investigations for the last ten years. In addition to being a criminal investigator, SA Galante is a Computer Investigative Specialist, who has participated in numerous child exploitation cases involving computers. SA Galante has received 80 hours of training for investigation of online child exploitation through the government and other vendors. Currently, SA Galante is an ICE Representative in Singapore.

4. The facts set forth in this affidavit are based upon my personal observations, my training and experience, and information obtained from other law enforcement officers. This affidavit is intended to show that there is sufficient probable cause for the requested search warrant and does not purport to set forth all of my knowledge of, or investigation into, this matter.

5. The terms "minor," "visual depiction," "sexually explicit conduct," and "child pornography" as used herein and in Attachment B, are defined as set forth in Title 18, United States Code, Section 2256. The term "illicit sexual conduct," as used herein and in Attachment B, is defined as set forth in Title 18, United States Code, Section 2423(f).

II. ITEMS TO BE SEARCHED

6. This affidavit is in support of an application to search the items listed below, all of which were found and seized during a June 2006 search warrant executed by the Cambodian National Police ("CNP") at the Phnom Penh, Cambodia residence of a United States citizen, MICHAEL JOSEPH PEPE ("PEPE"). All of the items to be searched are currently in the custody of United States Immigration and Customs Enforcement in the Central District of California :

- a. An off-white, Hewlett Packard computer tower bearing serial number, US01811010.
- b. Twenty-seven (27) pornographic Compact Discs ("CD"), with titles and markings that included: "15 years old little girls with crazy sex event", "Japanese Girls", "animal instinct 4: Animal World", "Tender Baby", and "14 Years Old Unsensor".
- c. The following thirty-one (31) miscellaneous CD's:
 1. A CD with red markings that read "TDK", "CD-RW80", "HIGH SPEED", and "700MB". This CD was found in a jewel case, which had an insert with handwritten notes in blue ink that read "HOME 111605", "4 GIRLS", "HOME 102805", "SKV & NEW GIRL". The following handwritten notes in blue ink had been crossed out: "HOME GIRLS 112605", "HOME GIRLS AUG4", "KIA", "NAP & KIA 1", "NAP & KIA 2", "NI 2", "NI 102905", and "HOME GIRLS AUG4 016".
 2. A CD with markings that read "princo", "Rewritable", "CD-RW", "80min. 700MB", "High Speed", "4x-12x", and "Contents:". This CD's "Contents:" were handwritten and listed as "VARIOUS VILLAGES & CHANRY".

3. A CD with red markings that read "TDK", "CD-RW80", "HIGH SPEED", and "700MB". This CD had handwritten markings that read "VILLAGES" and "SOCRATES FOUNDATION". This CD was found in a jewel case, which had an insert with handwritten notes in blue ink that read "SOCRATES FOUNDATION", "AREY KSAYH", "CULTURAL ORPH", "MONK FUNERAL", "OLD VILLAGE", "PURSAT 103005", "REAM 071405", and "REAM 2".

4. A CD with red markings that read "TDK", "CD-RW80", "HIGH SPEED", and "700MB". This CD had blue handwritten markings that read "MP".

5. A CD with markings that read "SONY", "CD-R", and "700MB". This CD had blue handwritten markings that read "DATA & PIC".

6. A CD with markings that read "maxell", "CD-R", and "700 MB". This CD had blue handwritten markings that read "PARTY", "PARTY 2", and "PARTY USA".

7. A CD with red markings that read "TDK", "CD-RW80", "HIGH SPEED", and "700MB". This CD had handwritten markings that read "CHANRY". This CD was found in a jewel case, which had an insert with handwritten notes in blue ink that read "CHANRY", "BATTENBANG TRIP", "CHANRY", and "CHANRY ID".

8. A CD with markings that read "maxell", "XL-II 80", and "Music PRO". This CD was found in a jewel case, which had an insert with handwritten notes read "Suslainabale village", "25/12/04", and "Mr. Milchaek pepe".

9. A CD with markings that read "SAMSUNG" and "48x". This CD had handwritten markings that read "BRETT's PARTY" and "REAM".

10. A CD with markings that read "SONY", "DVD-RW", and "120min/4.7GB".

17. A CD with markings that read "SONY", "CD-R", and "700MB".

This CD had blue handwritten markings that read "MED. INFO."

18. A CD with markings that read "SONY", "CD-R", and "700MB".

This CD was found in a jewel case, which had a blue insert with an orange circle displayed.

19. A CD with markings that read "webroot" and "Spy Sweeper".

20. A CD with markings that read "WEB BUILDER", "over 150

Tools & Tips to Build Better & Faster WEB SITES".

21. A CD with markings that read "Norton", "2002", and "Internet

Security".

22. A green CD with markings that read "CD" and "Windowsxp".

23. A blue CD with markings that read "Software, Videos & Games"

and "Windowsxp".

24. A CD with has blue markings that read "VCD-" and "VOL-217".

25. A CD with black markings that read "Sustainable Village

Organization" and "VCD". This CD was found in a jewel case, which had an insert with a photograph of PEPE standing with several children.

26. A purple and white CD with markings that read "SAMSUNG CD-

RW" and "User's Guide".

27. A red CD with markings that read "The Essential SIMON &

GARFUNKEL".

28. A CD with markings that read "A Midsummer Nightis Dream",

"Master", and "ISRC CN H09-99-443-00/A".

29. A CD with black markings that read "BEST CLASSICS". This

CD was found in a jewel case, which had a red insert with markings that read "CLASSICAL MUSIC" and "BEST CLASSICS".

30. A CD with markings that read "MASTERS OF CLASSICAL MUSIC", "BACH", "BRANDENBERG CONCERTO NO.1", and "VIOLN CONCERTO IN E MAJOR".

31. A pink CD with markings that read "COLLECTOR'S EDITION", "251", and "eGames".

d. The following five (5) 3.5-inch floppy disks:

1. A black Sony disk with a white label. This label has handwritten markings that read "CAMBODIA", "NAA", and "DRAFT PAPER".

2. A green maxell disk with a white label. This label has handwritten markings that read "PERSONAL".

3. A green maxell disk with a white label. This label has handwritten markings that read "CULTURAL ANTHROPOLOGY" and "ENGLISH". This label also has a handwritten note that reads "FINANCIAL MANAGEMENT", which was crossed out.

4. A green maxell disk with a white label. The label has handwritten markings that read "MANAGEMENT PRINCIPLES".

5. A blue maxell disk.

III. ITEMS TO BE SEIZED

7. Based upon the information set forth in this Affidavit, I respectfully submit that there is probable cause to believe that the following items, which constitute evidence of violations of Title 18, United States Code, Sections 2423(c) and 2260, will be found in the ITEMS TO BE SEARCHED:

a. Visual depictions of I.T., L.K., S.S., S.R.

- b. Visual depictions of minors, including all visual depictions of minors located at the Cambodia residence of Michael Pepe.
- c. Visual depictions of minors engaging in sexually explicit conduct.
- d. Correspondence pertaining to the possession, receipt, distribution and/or reproduction of child pornography.
- e. Material containing names, addresses, and contact information for any minor visually depicted while engaged in sexually explicit conduct.
- f. Material containing child erotica, which are materials that are sexually arousing to individuals who are sexually interested in minors, but which are not in and of themselves obscene and which do not necessarily depict minors in sexually explicit conduct. Child erotica are written materials dealing with sex education, child pornography, sexual abuse of children, incest, child prostitution, missing children, investigative techniques of child exploitation, sexual disorders, pedophilia, man-boy love, nudist publications, diaries, and fantasy writings.
- g. As used herein, the terms visual depictions, material, files, records, programs, or correspondence includes visual depictions, material, files, records, programs, or correspondence created, modified or stored in any form including electronically.

IV. TIMING OF SEARCH

8. As noted above, the ITEMS TO BE SEARCHED are already in the possession of United States Immigration and Customs Enforcement in the Central District of California. Consistent with the requirements of Rule 41, the ITEMS TO BE SEARCHED will be delivered to computer forensic technicians within 10 days of the effective date of this warrant to commence the search. For the reasons noted in paragraph 19 below, the search will not be

completed during the 10-day period. However, the ITEMS TO BE SEARCHED will be preliminarily examined to determine whether they contain any evidence or are an instrumentality of a crime, within 60 days. If the computer forensic technicians determine that the data does not fall within any of the items to be seized pursuant to this warrant or is not otherwise legally seized, the government will return these items within a reasonable period of time not to exceed 60 days from the date of execution of the warrant. If the government needs additional time to determine whether the data falls within any of the items to be seized pursuant to this warrant, it must obtain an extension of the time period from the Court within the original sixty day period.

IV. INVESTIGATION

9. Beginning on or about June 14, 2006, ICE Bangkok received information from two Non-Governmental Organizations that a U.S. citizen, later identified as PEPE, had sexually abused and raped a number of children at his compound in Phnom Penh, Cambodia. During the course of the investigation, AIA Phillips interviewed four of the child victims (between the ages of 9 and 12 years-old) who all identified PEPE as the individual who sexually abused them. Based upon their investigation, in June 2006, the Cambodian National Police ("CNP") arrested PEPE and executed search warrants at PEPE's compound in Phnom Penh, where evidence of PEPE's sexual abuse of his child victims was seized.

10. On June 17, 2006, after PEPE left his Phnom Penh compound at Street 596, House #83, Tol Kork, Phnom Pehn, Cambodia, the CNP arrested PEPE for rape and debauchery. Later, on June 17, 2006 and June 19, 2006, while accompanied by ICE Bangkok, the U.S. State Department (Diplomatic Security Service), and the two Non-Governmental Organizations, the CNP executed search warrants at PEPE's compound in Phnom Penh. Among the items seized were the following:

a. A blue Transcend JetFlash Drive 256MB. A JetFlash Drive is a small and portable data storage device.

b. A Maxtor Computer Hard Drive bearing number, E-H011-02-3056;

c. A Lexar 16MB Compact Flash;

d. Thirty-one (31) CD's;

e. Five (5) 3.5-inch floppy disks;

f. An off-white, Hewlett Packard computer tower bearing serial number, US01811010, found in PEPE's massage room; and

g. Twenty-seven (27) pornographic CD's, with titles and markings that included: "15 years old little girls with crazy sex event", "Japanese Girls", "animal instinct 4: Animal World", "Tender Baby", and "14 Years Old Unsensored".

11. Subsequently, only the Maxtor Computer Hard Drive bearing number, E-H011-02-3056; the blue Transcend JetFlash Drive 256MB; and the Lexar 16MB Compact Flash were sent by ICE Bangkok to ICE Singapore for a forensic examination. The thirty-one (31) CD's; five (5) 3.5-inch floppy disks; twenty-seven (27) pornographic CD's; and the off-white, generic computer tower bearing number, 264185-001, were not examined by the CNP or ICE.

12. On June 30, 2006, ICE Singapore SA David Galante, a trained forensic specialist, conducted a forensic examination of the Maxtor Computer Hard Drive bearing number, E-H011-02-3056; the blue Transcend JetFlash Drive 256MB; and the Lexar 16MB Compact Flash previously sent by ICE Bangkok. The following is a summary of the examination:

a. The Maxtor Computer Hard Drive bearing number, E-H011-02-3056, contained images of female minors engaging in sexually explicit conduct. Further, these images were found to be homemade and taken by a digital camera.

b. The blue Transcend JetFlash Drive 256MB contained images of explicit child pornography. Further, the images were found to be homemade and taken by a digital camera.

c. A search of the unallocated space on the Maxtor Computer Hard Drive bearing number, E-H011-02-3056, and the blue Transcend JetFlash Drive 256MB revealed images of explicit child pornography and minors engaging in sexually explicit conduct. When computer files are erased or deleted, the content of the file is not actually erased. The data from the 'erased file' continues to exist in an area commonly referred to as "unallocated space." As a result, the data remains behind for discovery through the use of data recovery and/or computer forensic software.

13. On July 20, 2006, U.S. Customs and Border Protection ("CBP") Officer Tim Kirkham checked for PEPE's most recent travel details through the CBP computer systems that query passenger, reservation, and travel itinerary information from all international flights that depart from, arrive at, or transit through the U.S. According to CBP computer systems, on September 1, 2005, PEPE departed Los Angeles International Airport for Manila, Philippines. On September 3, 2005, PEPE departed Manila, Philippines for Phnom Penh, Cambodia by way of Bangkok, Thailand.

14. On July 21, 2006, I reviewed some of the computer information and images from the blue Transcend JetFlash Drive 256MB, which was seized during the June 2006 execution of the CNP search warrant at PEPE's Phnom Penh compound, and previously sent by SA Galante. The following is a summary of the review:

a. A folder labeled, "Girls 2," contained a set of 13 images of a young Asian girl ("JANE DOE 1"), approximately 15-17 years old, in PEPE's bedroom at his Phnom Penh

compound. JANE DOE 1 was photographed undressing, lying naked, and posing in a sexually explicit manner on PEPE's bed. There were also three images of a young Asian girl ("JANE DOE 2"), approximately 6-8 years old, undressing and showering naked in PEPE's bathroom.

b. A folder labeled, "GIRLS 3," contained a set of 35 images of JANE DOE 1 and JANE DOE 2 in PEPE's bedroom at his Phnom Penh compound. JANE DOE 1 and JANE DOE 2 were photographed undressing, lying naked, posing in a sexually explicit manner on PEPE's bed, and showering in PEPE's bathroom.

c. A folder labeled, "GIRLS 4," contained a set of 15 images of JANE DOE 2 in PEPE's bedroom at his Phnom Penh compound. JANE DOE 2 was photographed lying naked and posing in a sexually explicit manner on PEPE's bed.

d. A folder labeled, "Home girls 0705," contained a set of 19 images of a young Asian girl ("JANE DOE 3"), approximately 10-13 years old, in PEPE's bedroom at his Phnom Penh compound. JANE DOE 3 was photographed undressing, lying naked, and posing in a sexually explicit manner on PEPE's bed.

e. A folder labeled, "SPIDER," contained a set of 83 images of a young Asian girl ("JANE DOE 4"), approximately 10-13 years old, in PEPE's bedroom at his Phnom Penh compound. JANE DOE 4 was photographed undressing, lying naked, and posing in a sexually explicit manner on PEPE's bed.

f. A folder labeled, "Friend 111111," contained a set of 11 images of a young Asian girl ("JANE DOE 5"), approximately 5-8 years old, topless, undressing, changing outfits, naked, and posing for the photographs.

15. Also, on July 21, 2006, I reviewed some of the computer information and images previously seized from PEPE's computer, which was seized during the June of 2006 execution

of the CNP search warrant at PEPE's Phnom Penh compound, and previously sent by SA Galante. The following is a summary of the review:

a. The computer had folders that contained hundreds of suspected child pornography images depicting young children, approximately 7-16 years old, dressed in lingerie, undressing, naked, and posing in a sexually explicit manner. Further, many of the suspected child pornography images were kept in separate folders, labeled with the children's names, containing a series or set of images of the same young child.

b. A folder labeled, "Little 1," contained 13 viewable images of JANE DOE 2 in PEPE's bedroom at his Phnom Penh compound. JANE DOE 2 was photographed lying naked, posing in a sexually explicit manner on PEPE's bed, and showering in PEPE's bathroom. Further, five of the viewable images were of JANE DOE 2 performing oral sex, on PEPE's bed, upon a naked male who closely matches PEPE's physical description.

c. There were 80 separately labeled folders containing hundreds of thumbnail images. A thumbnail image is a small, low-resolution version of a larger image used for quick identification. PEPE's computer was being used as a virtual library of his images. Among those 80 folders are the following:

i. "19_Girls 2," contained the thumbnail image set of the images found in the "Girls 2" folder of PEPE's thumb-drive. JANE DOE 1 was photographed undressing, lying naked, and posing in a sexually explicit manner on PEPE's bed. There were also three thumbnail images of JANE DOE 2 undressing and showering naked in PEPE's bathroom.

ii. "20_GIRLS 3," contained the thumbnail image set of the images found in the "GIRLS 3" folder of PEPE's thumb-drive. JANE DOE 1 and JANE DOE 2 were

photographed undressing, lying naked, posing in a sexually explicit manner on PEPE's bed, and showering in PEPE's bathroom. There was also a thumbnail image of PEPE in this folder.

iii. "21_GIRLS 4," contained the thumbnail image set of the images found in the "GIRLS 4" folder of PEPE's thumb-drive. JANE DOE 2 was photographed lying naked and posing in a sexually explicit manner on PEPE's bed.

iv. "23_Little 1," contained the thumbnail image set of the images found in the "Little 1" folder. "23_Little 1" was a set of 43 thumbnail images of JANE DOE 2 in PEPE's bedroom at his Phnom Penh compound. JANE DOE 2 was photographed lying naked, posing in a sexually explicit manner on PEPE's bed, and showering in PEPE's bathroom. Further, 13 of the thumbnail images were of JANE DOE 2 performing oral sex, on PEPE's bed, upon a naked male who closely matches PEPE's physical description.

v. "26_Ni 102905," contained a set of 44 thumbnail images of a young Asian girl ("JANE DOE 6"), approximately 10-13 years old, in PEPE's bedroom at his Phnom Penh compound. JANE DOE 6 was photographed undressing, lying naked, and posing in a sexually explicit manner on PEPE's bed. Further, three of the thumbnail images were of JANE DOE 6 naked with her wrists bound to PEPE's bed.

vi. "27_Ni 2," contained a set 79 thumbnail images of JANE DOE 6 in PEPE's bedroom at his Phnom Penh compound. JANE DOE 6 was photographed undressing, lying naked, and posing in a sexually explicit manner on PEPE's bed. Several of the thumbnail images showed a naked JANE DOE 6 with her wrists bound to her ankles and her exposed buttocks in the air. There were also several of the thumbnail images, which depicted JANE DOE 6 performing oral sex, on PEPE's bed, upon a naked male who closely matches PEPE's physical description.

vii. "28_Hen 1," contained a set of 52 thumbnail images of JANE DOE 4. JANE DOE 4 was photographed undressing, lying naked, and posing in a sexually explicit manner on a bed.

viii. "29_Hem 2," contained a set of 83 thumbnail images of JANE DOE 4 in PEPE's bedroom at his Phnom Penh compound. JANE DOE 4 was photographed undressing, lying naked, and posing in a sexually explicit manner on PEPE's bed.

ix. "31_Nap & Kia 1," contained a set of 17 thumbnail images of two young Asian Girls ("JANE DOE 7" and "JANE DOE 8"), approximately 10-13 years old, in PEPE's bedroom at his Phnom Pehn compound. JANE DOE 7 and JANE DOE 8 were photographed undressing, lying naked, posing in a sexually explicit manner on PEPE's bed, and showering in PEPE's bathroom.

x. "32_Nap & Kia 2," contained a set of 24 thumbnail images of JANE DOE 7 and JANE DOE 8 in PEPE's bedroom at his Phnom Penh compound. JANE DOE 7 and JANE DOE 8 were photographed undressing, lying naked, posing in a sexually explicit manner on PEPE's bed, and showering in PEPE's bathroom. Further, within this set, there were some thumbnail images of a fully clothed PEPE posing with a fully clothed JANE DOE 7 and JANE DOE 8, respectively. Also, included in this set were four thumbnail images of a naked PEPE posing with a naked JANE DOE 7 and JANE DOE 8, respectively.

xi. "33_Kia," contained 72 thumbnails of JANE DOE 7. JANE DOE 7 was photographed undressing, lying naked, and posing in a sexually explicit manner on a bed.

d. There were several photographs of PEPE's four alleged child victims: I.T., L.K., S.S., and S.R. The girls were photographed around PEPE's Phnom Penh compound, playing and posing in different outfits.

16. On September 12, 2006, one of PEPE's sisters provided SA Carlos Ortiz and me with dozens of emails and letters received from PEPE while he was incarcerated in Cambodia that mostly detailed his requests and health. Also, included was a letter, written by PEPE and contained within an envelope postmarked August 15, 2006 that detailed some of PEPE's actions in Cambodia. The following is a summary of this letter:

a. PEPE mentioned several of his child victims by name, including one for which PEPE had dozens of pornographic and sexually-explicit photographs on his computer.

b. PEPE stated that his daily routine usually included a massage from the girls after they returned from school and another later in the evening. Further, PEPE stated these massages led to "inappropriate touching, etc."

c. PEPE stated that on one occasion, after he was given Viagra, PEPE bound a known child victim and slapped her in the face. PEPE explained that the known child victim was given to him by her mother as a wife/girlfriend and described both his "sex drive" and "willpower" as "very low."

d. PEPE admitted taking naked pictures, at SANG's request, of her two nieces. Further, PEPE claimed that he erased these files from his computer.

17. On November 16, 2006, I received evidence seized during the CNP's June 2006 search warrant executed at PEPE's Phnom Pehn compound and sent by AIA Phillips, including nineteen (19) CD's and two (2) 3.5-inch floppy disks – all of which have not been forensically examined.

18. On April 17, 2007, SA Chris Kuzma received additional evidence seized during the CNP's June 2006 search warrant executed at PEPE's Phnom Pehn compound and sent by AIA Phillips, including: an off-white, Hewlett Packard computer tower bearing serial number,

US01811010; twenty-seven (27) pornographic CD's; twelve (12) miscellaneous CD's; and three (3) 3.5-inch floppy disks - all of which have not been forensically examined. The additional evidence received by SA Kuzma on 17, 2007, are all of those items listed in the ITEMS TO BE SEARCHED in paragraph 6 of this Affidavit.

V. COMPUTER DATA

19. Based upon my training, experience and information related to me by agents and others involved in the forensic examination of computers, I know that computer data can be stored on a variety of systems and storage devices including hard disk drives, floppy disks, compact disks, magnetic tapes and memory chips. I also know that during the search of the premises it is not always possible to search computer equipment and storage devices for data for a number of reasons, including the following:

a. Searching computer systems is a highly technical process which requires specific expertise and specialized equipment. There are so many types of computer hardware and software in use today that it is impossible to bring to the search site all of the necessary technical manuals and specialized equipment necessary to conduct a thorough search. In addition, it may also be necessary to consult with computer personnel who have specific expertise in the type of computer, software application or operating system that is being searched.

b. Searching computer systems requires the use of precise, scientific procedures which are designed to maintain the integrity of the evidence and to recover "hidden," erased, compressed, encrypted or password-protected data. Computer hardware and storage devices may contain "booby traps" that destroy or alter data if certain procedures are not scrupulously followed. Since computer data is particularly vulnerable to inadvertent or

intentional modification or destruction, a controlled environment, such as a law enforcement laboratory, is essential to conducting a complete and accurate analysis of the equipment and storage devices from which the data will be extracted.

c. The volume of data stored on many computer systems and storage devices will typically be so large that it will be highly impractical to search for data during the execution of the physical search of the premises. A single megabyte of storage space is the equivalent of 500 double-spaced pages of text. A single gigabyte of storage space, or 1,000 megabytes, is the equivalent of 500,000 double-spaced pages of text. Storage devices capable of storing fifteen gigabytes of data are now commonplace in desktop computers. Consequently, each non-networked, desktop computer found during a search can easily contain the equivalent of 7.5 million pages of data, which, if printed out, would completely fill a 10' x 12' x 10' room to the ceiling.

d. Computer users can attempt to conceal data within computer equipment and storage devices through a number of methods, including the use of innocuous or misleading filenames and extensions. For example, files with the extension ".jpg" often are image files; however, a user can easily change the extension to ".txt" to conceal the image and make it appear that the file contains text. Computer users can also attempt to conceal data by using encryption, which means that a password or device, such as a "dongle" or "keycard," is necessary to decrypt the data into readable form. In addition, computer users can conceal data within another seemingly unrelated and innocuous file in a process called "steganography." For example, by using steganography a computer user can conceal text in an image file which cannot be viewed when the image file is opened. Therefore, a substantial amount of time is necessary to

extract and sort through data that is concealed or encrypted to determine whether it is evidence, contraband or instrumentalities of a crime.

VI. CONCLUSION

20. Based on the foregoing, I believe there is probable cause to believe that the items listed in paragraph 7 and Attachment B, which are evidence of violations of Title 18, United States Code, Sections 2423(c) and 2260, will be found in the ITEMS TO BE SEARCHED identified in paragraph 6 and Attachment A.

Eddy Wang
Special Agent
United States Immigration & Customs Enforcement

SUBSCRIBED TO AND SWORN BEFORE ME
THIS 17 DAY OF MAY 2007

VICTOR B. KENTON
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE

O F F I C I A L U S E O N L Y

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DETAILS OF INVESTIGATION

On May 17, 2007, SA Wang obtained a search warrant for computer and electronic media evidence previously seized during the June 2006 search warrant executed by the Cambodian National Police (CNP). Among the items seized by the CNP and searched pursuant to this search warrant SA Wang obtained were the following:

One (1) CPU (Hewlett-Packard), Serial No. US01811010.

Twenty-seven (27) pornographic Compact Discs ("CD"), with titles and markings that included: "15 years old little girls with crazy sex event", "Japanese Girls", "animal instinct 4: Animal World", "Tender Baby", and "14 Years Old Unsensur".

The following thirty-one (31) miscellaneous CD's:

1. A CD with red markings that read "TDK", "CD-RW80", "HIGH SPEED", and "700MB". This CD was found in a jewel case, which had an insert with handwritten notes in blue ink that read "HOME 111605", "4 GIRLS", "HOME 102805", "SKV & NEW GIRL". The following handwritten notes in blue ink had been crossed out: "HOME GIRLS 112605", "HOME GIRLS AUG4", "KIA", "NAP & KIA 1", "NAP & KIA 2", "NI 2", "NI 102905", and "HOME GIRLS AUG4 016".
2. A CD with markings that read "princo", "Rewritable", "CD-RW", "80min. 700MB", "High Speed", "4x-12x", and "Contents:". This CD's "Contents:" were handwritten and listed as "VARIOUS VILLAGES & CHANRY".
3. A CD with red markings that read "TDK", "CD-RW80", "HIGH SPEED", and "700MB". This CD had handwritten markings that read "VILLAGES" and "SOCRATES FOUNDATION". This CD was found in a jewel case, which had an insert with handwritten notes in blue ink that read "SOCRATES FOUNDATION", "AREY KSAYH", "CULTURAL ORPH", "MONK FUNERAL", "OLD VILLAGE", "PURSAT 103005", "REAM 071405", and "REAM 2".
4. A CD with red markings that read "TDK", "CD-RW80", "HIGH SPEED", and "700MB". This CD had blue handwritten markings that read "MP".
5. A CD with markings that read "SONY", "CD-R", and "700MB". This CD had blue handwritten markings that read "DATA & PIC".
6. A CD with markings that read "maxell", "CD-R", and "700 MB". This CD had blue handwritten markings that read "PARTY", "PARTY

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EXHIBIT B

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2", "PARTY USA".

7. A CD with red markings that read "TDK", "CD-RW80", "HIGH SPEED", and "700MB". This CD had handwritten markings that read "CHANRY". This CD was found in a jewel case, which had an insert with handwritten notes in blue ink that read "CHANRY", "BATTENBANG TRIP", "CHANRY", and "CHANRY ID".

8. A CD with markings that read "maxell", "XL-II 80", and "Music PRO". This CD was found in a jewel case, which had an insert with handwritten notes read "Suslainabale village", "25/12/04", and "Mr. Milchaek pepe".

9. A CD with markings that read "SAMSUNG" and "48x". This CD had handwritten markings that read "BRETT's PARTY" and "REAM".

10. A CD with markings that read "SONY", "DVD-RW", and "120min/4.7GB".

11. A CD with markings that read "maxell", "XL-II 80", and "Music PRO". This CD had black handwritten markings that read "school supply and village." and "class. 2004.oct.9". This CD was found in a jewel case, which had an insert with handwritten notes read "VARIOUS UNKNOWN PROGRAMS".

12. A CD with red markings that read "TDK", "CD-RW80", "HIGH SPEED", and "700MB". This CD had handwritten markings that read "MISC. FUNCTIONS". This CD was found in a jewel case, which had an insert with handwritten notes in blue ink that read "BAT HOUSE", "BRETT's PARTY JULY 2005", "BETTS PARTY JULY 2005", "CLASS GROUP", "HONG's PARTY", "HOUSE 061605", "PARTY", "PARTY 2", and "USA & PARTY".

13. A CD with markings that read "maxell", "CD-R", and "700 MB". This CD had markings that read "DR. LY".

14. A CD with markings that read "maxell", "CD-R", and "700 MB". This CD had blue markings that read "SCH. & WEDDING".

15. A CD with markings that read "SONY", "CD-RW", "CD Rewritable", "CD-RW650", and "650MB". This CD was found in a jewel case, which had an insert with handwritten notes in blue ink that read "GIRLS NOW", "MOM", "MOMS", "SCHOOL PARTY", "GIRLS 012206", "SCH GIRLS", "2006-01", "VALENTINE GIRLS", "CHRISTMAS 1", "CHRISTMAS 2005", and "GIRLS 121005".

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16. A CD with markings that read "SONY", "CD-R", and "700MB". This CD had red markings that read "NARY ALBUM".
17. A CD with markings that read "SONY", "CD-R", and "700MB". This CD had blue handwritten markings that read "MED.INFO"
18. A CD with markings that read "SONY", "CD-R", and "700MB". This CD was found in a jewel case, which had a blue insert with an orange circle displayed.
19. A CD with markings that read "webroot" and "Spy Sweeper".
20. A CD with markings that read "WEB BUILDER", "over 150 Tools & Tips to Build Better & Faster WEB SITES".
21. A CD with markings that read "Norton", "2002", and "Internet Security".
22. A green CD with markings that read "CD" and "Windowsxp". This CD does not appear to be a genuinely issued product.
23. A blue CD with markings that read "Software, Videos & Games" and "Windowsxp". This CD does not appear to be a genuinely issued product.
24. A CD with has blue markings that read "VCD-" and "VOL-217".
25. A CD with black markings that read "Sustainable Village Organization" and "VCD". This CD was found in a jewel case, which had an insert with a photograph of PEPE standing with several children.
26. A purple and white CD with markings that read "SAMSUNG CD-RW" and "User's Guide".
27. A red CD with markings that read "The Essential SIMON & GARFUNKEL". This CD does not appear to be a genuinely issued product.
28. A CD with markings that read "A Midsummer Nightis Dream", "Master", and "ISRC CN H09-99-443-00/A J6".
29. A CD with black markings that read "BEST CLASSICS". This CD was found in a jewel case, which had a red insert with

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markings that read "CLASSICAL MUSIC" and "BEST CLASSICS". This CD does not appear to be a genuinely issued product.

30. A CD with markings that read "MASTERS OF CLASSICAL MUSIC", "BACH", "BRANDENBERG CONCERTO NO.1", and "VIOLIN CONCERTO IN E MAJOR". This CD does not appear to be a genuinely issued product.

31. A pink CD with markings that read "COLLECTOR'S EDITION", "251", and "eGames".

The following five (5) 3.5-inch floppy disks:

1. A black Sony disk with a white label. This label has handwritten markings that read "CAMBODIA", "NAA", and "DRAFT PAPER".
2. A green maxell disk with a white label. This label has handwritten markings that read "PERSONAL".
3. A green maxell disk with a white label. This label has handwritten markings that read "CULTURAL ANTHROPOLOGY" and "ENGLISH". This label also has a handwritten note that was crossed out that reads "FINANCIAL MANAGEMENT".
4. A green maxell disk with a white label. The label has handwritten markings that read "MANAGEMENT PRINCIPLES".
5. A blue maxell disk.

Between May 17, 2007 and July 12, 2007, CFA Timothy Sullivan and SA Wang reviewed the evidence. The following is a summary of the subsequent review of the computer, the pornographic CD's, and the floppy disks:

The CPU (Hewlett-Packard), Serial No. US01811010, contained no derogatory information and no visual depictions of minors.

The twenty-seven (27) pornographic CD's, with titles and markings that included: "15 years old little girls with crazy sex event", "Japanese Girls", "animal instinct 4: Animal World", "Tender Baby", and "14 Years Old Unsensor", appeared to be commercially produced adult pornographic movies, music videos, and other non-derogatory material [Agent's note: The CD contained within the cover marked, "15 years old little girls with crazy sex event", was unreadable]. Among these CD's, there was one bestiality film.

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The five (5) floppy disks contained no derogatory information and no visual depictions of minors.

The following is a summary of the subsequent review of the thirty-one (31) CD's (the following CD numbers correlate to the above-mentioned CD numbers):

1. Contained visual depictions of known minor victims at PEPE's Phnom Penh, Cambodia residence.
2. Contained visual depictions of minors.
3. Contained visual depictions of minors.
4. Contained no derogatory information and no visual depictions of minors.
5. Contained visual depictions of minors.
6. Contained no derogatory information and no visual depictions of minors.
7. Contained visual depictions of minors.
8. Contained visual depictions of minors.
9. Contained no derogatory information and no visual depictions of minors.
10. Contained no derogatory information and no visual depictions of minors.
11. Contained visual depictions of minors.
12. Contained visual depictions of minors.
13. Contained no derogatory information and no visual depictions of minors.
14. Contained no derogatory information and no visual depictions of minors.
15. Contained visual depictions of known minor victims at PEPE's Phnom Penh, Cambodia residence.

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16. Contained no derogatory information and no visual depictions of minors.

17. Contained no derogatory information and no visual depictions of minors.

18. Contained visual depictions of minors.

19. Contained no derogatory information and no visual depictions of minors.

20. Contained no derogatory information and no visual depictions of minors.

21. Contained no derogatory information and no visual depictions of minors.

22. Contained no derogatory information and no visual depictions of minors.

23. Contained no derogatory information and no visual depictions of minors.

24. Contained no derogatory information and no visual depictions of minors.

25. Contained visual depictions of minors.

26. Contained no derogatory information and no visual depictions of minors.

27. Contained no derogatory information and no visual depictions of minors.

28. Contained no derogatory information and no visual depictions of minors.

29. Contained no derogatory information and no visual depictions of minors.

30. Contained no derogatory information and no visual depictions of minors.

31. Contained no derogatory information and no visual depictions of minors.

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On July 11, 2007, CPA Timothy Sullivan using forensic software identified the emails that were found on PEPE's computer that was previously seized by the CNP. More specifically, the emails were found on PEPE's Maxtor 40 GB Hard Drive (6051# 2757128) in sub-folders in the following folder path:

C:\Documents and Settings\Michael\Local Settings\Temporary Internet Files\Content.IE5

COLLATERAL REQUESTS: N/A

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9 MICHAEL PEPE

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION
13

14 UNITED STATES OF AMERICA,	}	NO. CR 07-168-DSF
15 Plaintiff,	}	REPLY TO GOVERNMENT'S CONSOLIDATED OPPOSITION TO MOTIONS TO SUPPRESS EVIDENCE
16 v.	}	
17 MICHAEL PEPE,	}	
18 Defendant.	}	
19	}	


20
21
22 Defendant, Michael Pepe, through his counsel of record, Deputy Federal Public
23 Defender Carlton F. Gunn and Deputy Federal Public Defender Charles Brown,
24 hereby replies to the government's consolidated opposition to defendant's Motion to
25 Suppress Evidence and Motion to Suppress Evidence Discovered as Result of
26 Computer Media Search Warrant. This reply is based on the attached memorandum
27 of points and authorities, all files and records in this case, and such additional
28

1 evidence and argument as may be presented at the hearing on the motions.

2
3 Respectfully submitted,

4 SEAN K. KENNEDY
5 Federal Public Defender


6 DATED: August 31, 2007

7 By 
8 CARLTON F. GUNN
9 Deputy Federal Public Defender

10 Respectfully submitted,

11 SEAN K. KENNEDY
12 Federal Public Defender

13 DATED: August 31, 2007

14 By 
15 CHARLES C. BROWN
16 Deputy Federal Public Defender

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 I.

4 ARGUMENT

5
6 A. EVEN IF THE SEARCH OF MR. PEPE'S HOME DID NOT VIOLATE THE
7 FOURTH AMENDMENT, THE WARRANTLESS SEARCH OF COMPUTER
8 MEDIA BY AMERICAN AGENTS ALONE IN SINGAPORE VIOLATED THE
9 FOURTH AMENDMENT.

10
11 The government makes only a passing attempt to justify the second – and
12 arguably most invasive¹ – intrusion on Mr. Pepe's Fourth Amendment rights
13 complained of in the defense Motion to Suppress Evidence – the search of the
14 contents of Mr. Pepe's computer, the thumb drive, and the digital camera media card.
15 All the government offers on this question is a suggestion in its statement of facts that
16 the forensic examination of the computer media in Singapore was simply an "offer of
17 assistance" to the Cambodian National Police. *See* Government's Opposition, at 6-7.
18 But this does not save the government for two reasons.

19
20
21
22 ¹ As recognized by the Supreme Court in *Andresen v. Maryland*, 427 U.S. 463
23 (1976) with respect to paper documents:

24 [T]here are grave dangers inherent in executing a warrant
25 authorizing a search and seizure of a person's papers that are not
26 necessarily present in executing a warrant to search for physical
27 objects whose relevance is more easily ascertainable. In searches
28 for papers, it is certain that some innocuous documents will be
examined, at least cursorily, in order to determine whether they
are, in fact, among those papers authorized to be seized.

Id. at 482 n.11. And as noted specifically with respect to computers in *United States*
v. Walser, 275 F.3d 981 (10th Cir. 2001): "Because computers can hold so much
information touching on many different areas of a person's life, there is a greater
potential for the 'intermingling' of documents and a consequent invasion of privacy
when police execute a search for evidence on a computer." *Id.* at 986.

1 First, the government offers no authority or argument as to why a search
2 conducted solely by American agents is not subject to the Fourth Amendment even if
3 it is conducted for the purpose of assisting foreign officials. The foreign search joint
4 venture cases suggest that whether foreign search law standards or American search
5 law standards apply turn not on who *requests* a search but on who *conducts* it. *Cf.*
6 *United States v. Peterson*, 812 F.2d 486, 490 (9th Cir. 1987) (looking to foreign
7 search law standards even where search is joint venture between United States and
8 foreign officials). The computer media search in Singapore was conducted solely by
9 American agents, and so it is subject to American search law standards, not Cambodia
10 search law standards.

11
12 Second, and in any event, the government's factual premise – that this was just
13 an “offer of assistance” – is not supported by the evidence. The request for the
14 computer media to be examined by American agents was made just one day after the
15 evidence was seized – in a letter from the Acting Regional Security Officer at the
16 United States Embassy in Phnom Penh. *See* Motion to Suppress Evidence, Exhibit G.
17 And that letter was not an “offer of assistance” in response to a request by the
18 Cambodian authorities. It was a request by American agents for “access to the
19 evidence, specifically, Mr. Pepe’s computer, hard drive, memory stick, and USB
20 thumb drive so that they may be sent to the United States for computer forensic
21 testing.” *Id.* Further, what the forensic examiner produced was a standard
22 Department of Homeland Security ICE “Report of Investigation” – with no reference
23 to any Cambodian investigation. *See* Motion to Suppress Evidence, Exhibit H.

24
25 In sum, whatever the nature of the search of Mr. Pepe’s home, the search of the
26 computer media was an American search subject to the standards which govern
27 American searches. That meant there should have been a warrant, and the absence of
28

1 a warrant made the search unlawful.

2
3 B. THE SEARCH OF MR. PEPE'S HOME WAS A JOINT VENTURE, DID
4 VIOLATE CAMBODIAN LAW, AND SO WAS UNREASONABLE UNDER THE
5 FOURTH AMENDMENT.

6
7 1. The Search Was a Joint Venture.

8
9 The government seeks to avoid the "joint venture" rule for foreign searches by
10 drawing a distinction between a "joint" investigation and a "parallel" investigation.
11 *See* Government's Opposition, at 5. But this is semantics, not substance. What this
12 Court should look at is substance. *Cf.* Government's Opposition, at 10
13 (acknowledging that question of whether investigation is joint venture requires a fact-
14 specific inquiry).

15
16 What the substance shows here is a joint venture. On each day, Agent Phillips
17 was there during the entire search. He also participated in the search – by looking for
18 and at evidence, if not actually taking it at that time; by looking through documents
19 and taking his own photographs (both of which actions are in and of themselves
20 searches or seizures of sorts); and by giving at least occasional direction when there
21 was something that needed to be done and had not been done by the Cambodian
22 officers on their own. In addition, it was Agent Phillips – or other American agents –
23 who actually took most, if not all, of the evidence into custody within a matter of a
24 few days. *See* Motion to Suppress Evidence, Exhibit D. Under these facts,² Agent
25 Phillips can and should be viewed as not just some outside observer but as part of the

26
27 ² The defense believes evidence at the hearing on the motions will establish
28 the facts set forth to the extent they are not already established or admitted in the
government's opposition and declarations.

1 “team.” That he was not completely in charge as the team leader does not mean there
2 was no joint venture.

3
4 None of the search cases cited by the government suggest a contrary
5 conclusion, moreover. In only one of those cases were American agents even present
6 during the search, and in that case they (1) were there only because they had been
7 invited by the foreign officials and (2) played only “a passive role.” *See United*
8 *States v. Benedict*, 647 F.2d 928, 930-31 (9th Cir. 1981). *Compare United States v.*
9 *Maher*, 645 F.2d 780, 783 (9th Cir. 1981) (“There is no evidence American officials
10 participated in the alleged wiretap,”); *United States v. Rose*, 570 F.2d 1358, 1362
11 (9th Cir. 1978) (noting that agents did not participate in and were not present at time
12 of search); *United States v. Stonehill*, 405 F.2d 738, 741-42 (9th Cir. 1968) (noting
13 that agents remained in office across street from foreign law enforcement office while
14 “raids” were conducted).

15
16 The earliest of the cases – *Stonehill* – actually provides a good contrast to the
17 present case. The court there pointed to six factors suggesting that there was no joint
18 venture: (1) that no United States agent selected any evidence and that the sole
19 purpose of the raids was to obtain evidence for Philippine proceedings; (2) that all
20 activities of the American agents took place before the raids began or after they
21 ended; (3) that the American agents were given permission to copy documents only
22 after the raids were completed and the documents catalogued; (4) that there was no
23 evidence of American agents attempting to short-circuit American citizens’ Fourth
24 Amendment rights; (5) that the American agents affirmatively objected to the
25 searches; and (6) that the American agents were not requesting any action
26 whatsoever, much less instigating an unlawful search. *Stonehill*, 405 F.2d at 746.

27
28 The circumstances in the present case were very different. First, Agent Phillips

1 did select at least some evidence and the raids appear to have been designed to obtain
2 evidence for his purposes as well as proceedings in Cambodia. Second, Agent
3 Phillips' activities were not limited to before the searches began and/or after they
4 ended and he did not object to the searches; to the contrary, he was present during
5 the search process and participated in the examination of evidence. Third, and
6 finally, Agent Phillips was not only allowed to examine and/or copy evidence, but
7 was actually allowed to take evidence when it was still sitting loosely in the bags that
8 were used to remove it from the house.

9
10 2. There Was a Violation of Cambodian Search Law.
11

12 The government's fallback argument that there was no violation of Cambodian
13 search law also fails. First, the claim that the authorities obtained a search warrant
14 prior to the search, as opposed to after the fact, is suspect. As noted in the defense's
15 moving papers, the warrant, while dated June 17, 2006, appears to have been actually
16 issued on some later date, because it is based on a report that is dated June 19, 2006
17 and refers to information obtained on June 18, 2006. *See Motion to Suppress*
18 *Evidence*, at 5, 8.
19

20 Second, there was no apparent effort to satisfy the preference that there be
21 neighbors present as witnesses. The exhibit which the government characterizes as
22 showing that there were ten "witnesses" present, *see Government's Opposition*, at 14,
23 refers not to "witnesses" but to "participants" and, with the exception of the owner of
24 the house, lists only government officials and non-governmental organization
25 investigators. *See Government's Opposition*, Exhibit A to Declaration of Gary J.
26 Phillips. To characterize these sorts of individuals as the "witnesses" which
27 Cambodian search law requires ignores the obvious purpose of the witness provision,
28 which is to have *neutral* observers present.

1 C. THE SEARCH WARRANT FOR THE SECOND SET OF COMPUTER
2 MEDIA WAS A FRUIT OF THE UNLAWFUL SEARCH OF THE FIRST SET OF
3 COMPUTER MEDIA.

4
5 The Court should also reject the government's argument that the search warrant
6 for the second set of computer media was not a fruit of the unlawful search of the first
7 set of computer media. All that is left in the warrant affidavit once the information
8 from the first unlawful search is excised is (1) an admission about two photographs of
9 naked children, which may or may not have been child pornography³ and which
10 subsequently had been erased, and (2) suggestive labels on perhaps two of the CDs.⁴
11 This does not establish probable cause to search *every single item* of Mr. Pepe's
12 computer media.⁵

13
14 D. THE SEARCH WARRANT AFFIDAVIT DID NOT ESTABLISH
15 PROBABLE CAUSE FOR ALL OF THE CDS LISTED IN THE SEARCH
16 WARRANT.

17
18 The government's response to the argument that the search warrant affidavit
19

20 ³ A photograph of a naked child is not necessarily child pornography. It is
21 child pornography only if the child is engaged in some specified sex act and/or there
22 is "lascivious exhibition" of the genitals or pubic area. *See* 18 U.S.C. § 2256(2)(A),
23 (8). And not every exhibition of the genitals or pubic area is necessarily "lascivious."
24 *See United States v. Hill*, 459 F.3d 966, 968-69, 970-72 (9th Cir. 2006) (noting that
"not all images of nude children are pornographic," listing factors to be considered in
deciding whether exhibition of genitals or pubic area is "lascivious," and finding
probable cause based on detailed description of images).

25 ⁴ The government notes in its opposition that titles on the CDs included "15
26 years old little girls with crazy sex event," "Tender Baby," "14 Years Old Unsensored,"
and several others which the defense does not read as particularly suggestive. *See*
Government's Opposition, at 19 n.8.

27 ⁵ Perhaps, based on the labels, there would be probable cause to search the
28 suspiciously labeled CDs. The Court need not address that question unless there was
evidence found on those CDs.

1 did not establish probable cause for all of the CDs listed in the search warrant is an
2 assertion that the case of *United States v. Hill*, 459 F.3d 966 (9th Cir. 2006) resolved
3 that issue. The government reads *Hill* too broadly, however. The issue in *Hill* was
4 not whether there was probable cause, but whether officers could remove computer
5 media and search them off-site without explaining in the affidavit why that was
6 necessary. *See Hill*, 459 F.3d at 973. And the court held this was not permissible,
7 stating:

8 We do not approve of issuing warrants authorizing blanket
9 removal of all computer storage media for later examination when
10 there is no affidavit giving a reasonable explanation, Without
11 such individualized justification being presented to the magistrate,
12 we cannot be sure that the judge was aware of the officers' intent
13 and the technological limitations meriting the indiscriminate
14 seizure – and thus was intelligently able to exercise the court's
15 oversight function. An explanatory statement in the affidavit also
16 assures us that the officers could not reasonably describe the
17 objects of their search with more specificity. Accordingly, we
18 hold that the warrant here was overbroad in authorizing a blanket
19 seizure in the absence of an explanatory supporting affidavit,
20 which would have documented the informed endorsement of the
21 neutral magistrate.

22 *Hill*, 459 F.3d at 976-77 (citations and footnotes omitted).

23
24 The court did go on to hold that it would not apply the exclusionary rule, but it
25 so held only because “the officers were ‘motivated by considerations of practicality
26 rather than by a desire to engage in indiscriminate “fishing.”’” *Hill*, 459 F.3d at 977.
27 But here, in contrast to *Hill*, there was “indiscriminate fishing.” The officers did not
28 limit themselves to just CDs with arguably suspicious labels such as “15 years old

1 little girls with crazy sex event,” “Tender Baby,” and “14 Years Old Unsensor,”
2 Government’s Opposition, at 19 n.8, or even just unlabeled CDs, but included every
3 CD Mr. Pepe had, including CDs with labels such as “the essential SIMON &
4 GARFUNKEL”; “A Midsummer Night’s Dream”; and “MASTERS OF CLASSICAL
5 MUSIC,” “BACH,” “BRANDENBURG CONCERTO NO. 1,” “VIOLIN
6 CONCERTO IN E MAJOR,” “Norton,” “Windowsxp,” and “SAMSUNG CD-RW.”
7 *See* Motion to Suppress Evidence Discovered as Result of Computer Media Search
8 Warrant, Exhibit A (warrant), at 4.

9
10 In these circumstances, the Court should not extend *Hill*’s holding that the
11 exclusionary rule should not be applied. Evidence found on the CDs in the present
12 case should be suppressed.

13
14 E. THE GOVERNMENT DOES HAVE TO SHOW THAT THE SEARCH OF
15 THE COMPUTER MEDIA UNDER THE SEARCH WARRANT WAS PROPERLY
16 LIMITED TO THOSE FILES WHICH MIGHT REASONABLY BE EXPECTED TO
17 CONTAIN THE ITEMS WHICH THE SEARCH WARRANT ALLOWED AGENTS
18 TO SEARCH FOR.

19
20 The government’s suggestion that its expert’s search of the computer media
21 under the search warrant could be unlimited simply because “the search was limited
22 to computer media,” Government’s Opposition, at 21, sweeps too broadly. *Hill* does
23 not permit an officer conducting a computer search to conduct a general exploratory
24 search of any and all computer files with no limitation at all; it simply held that the
25 search warrant itself need not set forth limitations. The opinion explained:

26 [W]e look favorably upon the inclusion of a search protocol; but
27 its absence is not fatal. . . . [E]ven though a warrant authorizing a
28 computer search might not contain a search protocol restricting the

1 search to certain programs or file names, the officer is always
2 “limited by the long-standing principle that a duly issued warrant,
3 even one with a thorough affidavit, may not be used to engage in a
4 general, exploratory search.” The reasonableness of the officer’s
5 acts both in executing the warrant and in performing a subsequent
6 search of seized materials remains subject to judicial review.

7 *Hill*, 459 F.3d at 978 (citations omitted).

8
9 How the government’s agents focused their searches within the computer
10 media is therefore subject to judicial review. The government does have to show that
11 the search was properly focused.⁶

12
13 II.

14 CONCLUSION

15
16 First, the evidence found in the warrantless search of the computer media in
17 Singapore must be suppressed, because that search was conducted solely by
18 American agents, without the warrant the Fourth Amendment generally requires for
19 American searches. Second, even the evidence found in the earlier search of Mr.
20 Pepe’s home in Cambodia must be suppressed, because there was sufficient American
21 agent participation to trigger the foreign search joint venture exception that makes the


22
23 ⁶ The other potential issue raised by the defense Motion to Suppress Evidence
24 Discovered as Result of Computer Media Search Warrant – regarding searches more
25 than sixty days after issuance of the warrant – appears to be moot. The defense
26 argument is only that “any evidence found on media *on which the Government did*
27 *not find evidence* within the scope of the search warrant within the sixty-day search
28 period authorized by the search warrant must be suppressed.” Motion to Suppress
Evidence Discovered as Result of Computer Media Search Warrant, at 9 (emphasis
added). The defense does not contend that there can be no additional search of the
media on which evidence *was* found within the sixty-day period. More specifically,
the defense is not claiming additional searches conducted after the sixty-day search
period are unlawful if they were conducted only on the eleven CDs on which
evidence had already been found.

1 Fourth Amendment's reasonableness requirement applicable; that reasonableness
2 requirement requires compliance with at least the foreign country's law; and there
3 was not compliance with the foreign country's law here. Third, the evidence found
4 on the second set of computer media under authority of the search warrant must be
5 suppressed because (1) that search warrant was a fruit of the prior unlawful searches
6 and (2) that search warrant did not establish probable cause for searches of the CDs in
7 any event.

8
9 Respectfully submitted,

10 SEAN K. KENNEDY
11 Federal Public Defender


12 DATED: August 31, 2007

13 By 
14 CARLTON F. GUNN
15 Deputy Federal Public Defender

16 Respectfully submitted,

17 SEAN K. KENNEDY
18 Federal Public Defender

19 DATED: August 31, 2007

20 By 
21 CHARLES C. BROWN
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23
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11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION
13

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 MICHAEL PEPE,

18 Defendant.
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CASE NO. CR 07-168-DSF

NOTICE OF MOTION; MOTION
TO DISMISS INDICTMENT

Hearing Date: October 29, 2007

Hearing Time: 10:00 a.m.

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11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION
13

14 UNITED STATES OF AMERICA,)	CASE NO. CR 07-168-DSF
15 Plaintiff,	)	NOTICE OF MOTION; MOTION
16 v.	)	TO DISMISS INDICTMENT
17)	
18 MICHAEL PEPE,	)	Hearing Date: October 29, 2007
19 Defendant.	)	Hearing Time: 10:00 a.m.
20)	

21 TO: UNITED STATES ATTORNEY THOMAS O'BRIEN AND ASSISTANT
22 UNITED STATES ATTORNEYS PATRICIA DONAHUE AND JOHN J. LULEJIAN:

23 PLEASE TAKE NOTICE that on October 29, 2007 at 10:00 a.m., or as soon
24 thereafter as counsel may be heard, defendant Michael Pepe will make the following
25 motion:

26 /

27 /

MOTION

Defendant Michael Pepe, through his counsel of record, Deputy Federal Public Defender Carlton F. Gunn and Deputy Federal Public Defender Charles C. Brown, hereby moves this Honorable Court for an order dismissing the indictment on the following grounds:

(1) Title 18 U.S.C. § 2423(c) exceeds Congress' authority to regulate the channels of foreign commerce under the Foreign Commerce Clause and is thus unconstitutional;

(2) The statute cannot otherwise be upheld under any Foreign Commerce Clause theory other than the theory advanced by Congress in passing the statute;

(3) Even if the statute could arguably be upheld, there is constitutional doubt about its validity and thus, the statute should be interpreted narrowly to a class which would not include Mr. Pepe;

(4) The United States does not have extra-territorial jurisdiction over the offenses alleged to have been committed in Cambodia and, therefore, this Court lacks subject matter jurisdiction over this prosecution;

(5) Application of the statute to Mr. Pepe violates principles of international law, is unreasonable; and

(6) The Statute Violates the Due Process Clause of the Fifth Amendment.

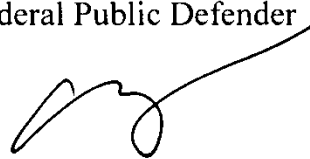
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1 This motion is based upon the attached Memorandum of Points and Authorities,
2 all files and records in this case, and any further evidence that may be adduced at the
3 hearing on this motion.
4

5
6 Respectfully submitted,
7 SEAN K. KENNEDY
8 Federal Public Defender
9

10 DATED: October 3, 2007

11 By 
12 CHARLES C. BROWN
13 Deputy Federal Public Defender
14

15 Respectfully submitted,
16 SEAN K. KENNEDY
17 Federal Public Defender
18

19 DATED: October 3, 2007

20 By 
21 CARLTON F. GUNN
22 Deputy Federal Public Defender
23
24
25
26
27
28

1 II.

2 STATEMENT OF FACTS¹

3
4 In March 2003, Michael Pepe left the United States and permanently relocated
5 to Cambodia, flying there on a one way ticket. Prior to leaving the United States, he
6 gave away his vehicle, computer, and other valuables. He arranged to maintain a
7 mailing address in the United States through his parents and sisters as well as a bank
8 account for receipt of his pension.

9 Soon after Mr. Pepe's arrival in Cambodia he obtained a job, moved into an
10 apartment on a long term lease, and began to accumulate the time necessary to
11 become a Cambodian citizen. Within a month of his arrival he registered himself
12 with the U.S. Embassy in Cambodia, providing them with emergency contact
13 information in the United States and his apartment address in Cambodia.

14 As Mr. Pepe's time as a Cambodian resident increased, he became more
15 involved in local community activities. He joined the Phnom Penh Veterans of
16 Foreign Wars Post (VFW) and became a lifetime member. As a new resident, he
17 obtained a Cambodian driver's license and purchased a vehicle and registered it with
18 Cambodian authorities, indicating his residence as Phnom Penh, Cambodia.

19 Mr. Pepe also met and married a Cambodian woman. With his marriage to a
20 Cambodian citizen, Mr. Pepe became a joint owner in her personal property,
21 including livestock. They also made substantial improvements to property owned by
22 his wife's extended family. Mr. Pepe also moved to larger house with his wife where
23 he lived for more than two years prior to his arrest.

24 Mr. Pepe would occasionally return to the United States to visit his family. His
25 last visit was on August 25, 2005, when he flew from Phnom Penh to Los Angeles to

26
27 ¹ The statement of facts is based on the discovery received in this case
28 and/or evidence the defense could present at an evidentiary hearing. The defense
requests an evidentiary hearing if the facts are contested by the government.

1 attend his daughter's wedding. After his visit, he returned to his residence in
2 Cambodia. His flight departed from Los Angeles on September 1, 2005, and arrived
3 in Phnom Penh on September 3.

4 Upon returning to Phnom Penh, Mr. Pepe continued to live and work in the
5 local community. Nine months after his return, on June 17, 2006, Mr. Pepe was
6 arrested by Cambodian authorities and was later handed over to U.S. authorities. He
7 was subsequently removed from Cambodia and returned to the United States where
8 he was ultimately charged with the instant offense. The indictment in this case
9 alleges that Mr. Pepe engaged in illicit sexual conduct with four different minors in
10 violation of § 2423(c). According to the discovery received to date, these acts are
11 alleged to have occurred sometime in April or May 2006.

12
13 III.

14 ARGUMENT

15 A.

16 **The Nexus Between the Alleged Acts and Foreign Commerce In This Case is So**
17 **Attenuated That Jurisdiction is Not Proper Under § 2423(c).**
18

19 **1. *Clark and Jackson*: The Meaning of Time, Travel, and Foreign**
20 **Commerce.**
21

22 In *Clark and Jackson*, the Ninth Circuit recently addressed the constitutionality
23 of § 2423(c). *United States v. Clark*, 435 F.3d 1100 (9th Cir. 2006), and *United*
24 *States v. Jackson*, 480 F.3d 1014 (9th Cir. 2007). In *Clark*, the Ninth Circuit found
25 that extraterritorial jurisdiction under § 2423(c) was proper under Congress's Foreign
26 Commerce Clause power. The Court analyzed the history of § 2423(c) and ruled that
27 the statute only required the government prove two elements: (1) travel in foreign
28 commerce and (2) illicit sexual conduct. *Clark*, 435 F.3d at 1105. The Court also

1 found that § 2423(c) did not require the government establish that the illicit conduct
2 occurred *while* a defendant was traveling. *Id.* at 1107.

3
4 a. Time and Intent

5 Consistent with the legislative history of § 2423(c), *Clark* made it clear that a
6 defendant need not form an intent to engage in illicit conduct at the time of his travel
7 in order to be guilty under § 2423(c). *Id.* In other words, an individual can violate §
8 2423(c) by engaging in illicit sex *shortly after* traveling to and arriving at his
9 destination. *Jackson*, 480 F.3d at 1100. As the legislative history suggested, the goal
10 was to relieve the government of the perhaps difficult burden of proving a
11 defendant's state of mind while in route to a particular destination. But, by divorcing
12 intent from travel in its reading of the statute, the Ninth Circuit raised several
13 unanswered questions: (1) when does the time gap between travel and act become so
14 attenuated that jurisdiction is no longer proper? and (2) what is the meaning of
15 "travel" and does it ever end? In addressing the first issue, the Court reasoned in
16 *Clark*, that "the lapse of time between his most recent transit between the United
17 States and Cambodia and his arrest was less than two months. [Therefore] we see no
18 plausible reading of the statute that would exclude its application to Clark's conduct
19 because of this limited gap." *Clark*, 435 F.3d at 1107. Thus, it was Clark's
20 engagement in an illicit sex act *shortly after* his arrival Cambodia that made
21 jurisdiction proper in that case. *Id.* at 1116. However, in an important footnote, the
22 court opined "whether a longer gap between the travel and the . . . act . . . would
23 raise constitutional or other concerns is an issue we leave for another day." *Id.* at
24 n.11.

25
26 b. Travel

27 The issue in *Jackson* was whether a United States citizen who permanently
28 relocated to Cambodia in 2001 and never returned to the United States was subject to

1 prosecution under § 2423(c) for acts committed in Cambodia. The Court ultimately
2 ruled that Jackson's conduct was not proscribed by § 2423(c) because Jackson was
3 no longer "traveling in foreign commerce" prior to the enactment of the statute in
4 2003. *Jackson*, 480 F.3d at 1024. In reaching its conclusion, the Court attempted to
5 provide a clearer definition of what it means to "travel in foreign commerce."

6 Ultimately, the Court rejected the government's "limitless interpretation of
7 travel" and ruled that "travel can end for a United States citizen at *some* point while
8 still abroad." *Id.* at 1022. The *Jackson* court proposed two equally viable
9 definitions of travel: (1) a common sense definition of travel that "ends upon arrival"
10 in a foreign land but contemplates a "future . . . return" to ones home country
11 (visitors), or (2) travel that ends upon permanent resettlement in a foreign country,
12 which contemplates a permanent intent to remain (residents or domiciliaries). *Id.*
13 Under both definitions, the *Jackson* Court found that since 18 months had passed
14 since the defendant had begun residing in Cambodia, he had both "arrived" and
15 "resettled" in that country before § 2423(c) was enacted. The *Jackson* opinion did
16 not address the jurisdictional question left open by *Clark* – whether the passage of
17 more than two months between travel and act attenuates foreign commerce clause
18 jurisdiction. *See Jackson*, 480 F.3d at 1017-18 n.6 ("Our resolution of this case also
19 does not depend upon the length of time between the end of travel and the sex act.
20 Instead, our focus is on the circumstance that the two-year gap between Jackson's
21 travel and his illicit sex acts straddled the statute's enactment. We therefore do not
22 consider whether a two-year gap lacking that characteristic would be a sufficiently
23 "longer gap" to "raise constitutional or other concerns.")

24
25 c. Nexus to Foreign Commerce

26 Authority for the exercise of the far reaching extraterritorial jurisdiction found
27 in § 2423(c) is derived from Congress's *foreign* commerce clause power which grants
28 Congress power "to regulate Commerce with foreign Nations, and among the several

1 States, and with the Indian Tribes.” Because Congress’s power to regulate interstate
2 commerce may be restricted by considerations of federalism and state sovereignty,
3 which do not impact its authority under the Foreign Commerce Clause, Congress’s
4 power to regulate under the Foreign Commerce Clause, has been described as
5 broader than its authority to regulate interstate commerce. *Nat’l League of Cities v.*
6 *Usery*, 426 U.S. 833 (1976); *see also Japan Line, Ltd. v. Los Angeles County*, 441
7 U.S. 434, 448-450 (1979) (in international relations and with respect to foreign
8 intercourse and trade the people of the United States act through a single government
9 with unified and adequate national power).

10 Yet, because this is a criminal case and not a commercial trade or foreign
11 relations case the question presented here is whether Congress has the power to
12 regulate the prohibited criminal activity – lawful travel using a channel of foreign
13 commerce, and engaging in sex with a minor several months after the lawful travel
14 has ceased. Whether a regulated activity falls within Congress’s constitutional
15 power under the Commerce Clause is “ultimately a judicial rather than a legislative
16 question[.]” *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 273 (1964)
17 (Black, J., concurring); *see also Hotel v. Virginia Surface Mining & Reclamation*
18 *Assn., Inc.*, 452 U.S. 264, 276-280 (1981) (“[S]imply because Congress may
19 conclude that a particular activity substantially affects interstate commerce does not
20 necessarily make it so”) (Rehnquist, J., concurring in judgment); *see also United*
21 *States v. Lopez*, 514 U.S. 549, 555 (1995) (Court must undertake task of determining
22 whether a rational basis existed for concluding that a regulated activity sufficiently
23 affected interstate [or foreign commerce]).

24 Traditionally, the Supreme Court has identified three categories of activity that
25 Congress may regulate under its commerce power: (1) the use of the *channels* of
26 commerce, (2) the regulation and protection of the *instrumentalities* of commerce,
27 and (3) activities having a *substantial relation* to interstate commerce. *Lopez*, 514
28 U.S. at 557. Thus, under *Lopez*, the statute must fall into one of the delineated

1 “categories” of activity that Congress may regulate under its commerce power to be
2 constitutional. *Id.* at 558. Although *Lopez* was an interstate commerce case, its
3 analysis applies equally to a foreign commerce challenge. *See United States v.*
4 *Cummings*, 281 F.3d 1046, 1049 n.1 (9th Cir. 2002) (recognizing that *Lopez* was
5 interstate commerce case, and applying *Lopez*’s analytical framework to foreign
6 commerce clause).

7 In *Clark*, the Ninth Circuit rejected the traditional commerce clause framework
8 and created a new test that found jurisdiction proper so long as there was a
9 “constitutionally tenable nexus with foreign commerce” and the regulated conduct
10 was rationally related to Congress’s authority under the Foreign Commerce Clause.
11 *Clark*, 435 F3d at 1115. The Court reasoned that because *Clark* traveled in foreign
12 commerce and engaged in conduct that was “economic” in character, jurisdiction was
13 proper, even though § 2423 was a criminal statute. *Id.*

14 Judge Ferguson in his dissent urged the majority to adopt the more traditional
15 *Lopez* and *Morrison* framework adopted in interstate commerce cases. Judge
16 Ferguson reasoned that § 2423(c) lacks any tangible links to the channels of
17 commerce that would justify upholding it under Congress’s Foreign Commerce
18 power. *Id.* at 1118. “This cannot mean that every act with a bare economic
19 component that occurs downstream from that travel is subject to regulation by the
20 United States under its Foreign Commerce power, or the Commerce Clause will have
21 been converted into a general grant of police power.” *Id.* Such a broad grant of
22 jurisdictional authority was troubling, because, as Judge Ferguson predicted, the only
23 U.S. citizen who could fall outside the reach of § 2423(c) would be a citizen by virtue
24 of birth who “never set foot in the United States.” *Id.* at 1120. Judge Ferguson also
25 pointed out that the purpose of § 2423(c) was to regulate criminal conduct and
26 although the proscribed conduct may contain an economic or commercial component,
27 there was no “tenable link to commerce with *foreign nations*” to justify regulation
28 under the Foreign Commerce Clause. *Id.* (*emphasis added*).

1 **2. A Constitutionally Tenable Connection to Foreign Commerce No Longer**
2 **Exists When Eight Months Separate Completed Travel and Act.**
3

4 The issue left unanswered in *Clark*, “whether a longer gap between the travel
5 and the . . . act would raise constitutional or other concerns . . .”, is squarely
6 raised in Mr. Pepe’s case. Here, the alleged conduct occurred several months after
7 Mr. Pepe’s interaction with the proverbial stream of foreign commerce. It is fair to
8 say that under the most recent definitions provided by the Ninth Circuit, Mr. Pepe
9 was no longer “traveling” at the time the alleged acts occurred. Rather, he was
10 indeed a resident of Cambodia who had demonstrated a “permanent intent to resettle”
11 in that country well before the time of the alleged acts.

12 Mr. Pepe moved to Cambodia in 2003. He registered himself with the U.S.
13 Embassy in Cambodia, he joined the Phnom Penh Veterans of Foreign Wars Post
14 (VFW), he obtained a Cambodian driver’s license, and he purchased a vehicle and
15 registered it with Cambodian authorities. Finally, he met and married a Cambodian
16 woman and leased a home: All this demonstrates his intent to “reside” in Phnom
17 Penh, Cambodia.

18 In 2005, he returned to the United States for a brief period of time to attend his
19 daughter’s wedding. His return flight from Los Angeles to Cambodia was on
20 September 3, 2005. This was his last contact with the stream of foreign commerce.
21 The alleged acts are said to have occurred more than seven months later, in April and
22 May of 2006.

23 Thus, it cannot be said that Mr. Pepe’s connection to foreign commerce is
24 “constitutionally tenable” to justify jurisdiction under § 2423(c). The lapse of time is
25 far greater than the two months in *Clark* and calls into question the reasonableness of
26 the application of § 2423(c) in this case. Even under the expansive test adopted by
27 the majority in *Clark*, it cannot be said that conduct attributed to Mr. Pepe some eight
28 months after his last “travel” has any tenable connection to foreign commerce to

1 make jurisdiction in this case a rational exercise of Congress's power under the
2 Foreign Commerce Clause.

3
4 **3. The Alleged Acts Were Primarily Non-Commercial In Nature.**

5
6 Under § 2423(c) "illicit sexual conduct" is defined as (1) commercial sex acts
7 and (2) non-commercial sex acts accomplished by use of force or threat. *Clark*, 435
8 F.3d. at 1110. The ruling in *Clark* addressing the constitutionality of 2423(c) was
9 limited to its "commercial sex acts" component. *Id.* at 1110, n.16. This was
10 explained as a situation where a U.S. citizen engages in a "commercial transaction
11 through which money is exchanged for sex." *Id.* at 1114.

12 Here, although extremely serious, the gravamen of the charge against Mr. Pepe
13 is that his conduct fell under the non-commercial component of § 2423(c)'s
14 prohibition against illicit sexual conduct. In this case, the alleged acts are primarily
15 non-commercial in nature and are based more on allegations of physical force and
16 intimidation. As such, the connection to foreign commerce is even more attenuated.

17 Because the alleged activities in this case occurred so far downstream from Mr.
18 Pepe's last international travel and lacked an economic component that is rationally
19 related to Congress's Foreign Commerce power, jurisdiction under § 2423(c) in this
20 case is not proper.

21
22 **4. Principles of Statutory Construction Requires That the Prohibited**
23 **Conduct in § 2423(c) Occur Soon After the Travel.**

24
25 Even assuming Congress had authority under the Foreign Commerce Clause to
26 enact this statute, several important fundamental maxims of statutory construction are
27 relevant in construing § 2423(c). First, "where a statute is susceptible of two
28 constructions, by one of which grave and doubtful constitutional questions arise and

1 by other of which such questions are avoided, [the Court's] duty is to adopt the
 2 latter." *United States v. Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909); *see also*
 3 *Jones v. United States*, 529 U.S. 848, 857 (2000). Second, "ambiguity concerning the
 4 ambit of criminal statutes should be resolved in favor of lenity." *Jones*, 529 U.S. at
 5 858. Third, "the starting point for interpreting a statute is the language of the statute
 6 itself." *United States v. Hackett*, 311 F.3d 989, 991 (9th Cir. 2002) (quoting
 7 *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980)).
 8 Fourth, with regard to the meaning of the words used, they "are to be construed
 9 according to 'their ordinary, contemporary, common meaning[s].'" *Hackett*, 311 F.3d
 10 at 992 (quoting *Pioneer Ins. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S.
 11 380, 388 (1993), and *Perrin v. United States*, 444 U.S. 37, 42 (1979)).

12 These important principles of statutory construction support the defense
 13 position that § 2423(c) does not apply when nearly eight months separate the alleged
 14 acts from the completed travel. A plain reading of the statute requires a closer
 15 temporal nexus between completed "travel" and "act." In plain terms, § 2423(c)
 16 punishes, "[a]ny United States citizen or alien admitted for permanent residence who
 17 travels in foreign commerce, **and** engages in any illicit sexual conduct . . ." 18
 18 U.S.C. § 2423(c) (emphasis added).

19 The conjunctive use of "and" in the statute by definition creates a limited
 20 temporal connection between travel and act. This is because one ordinary meaning of
 21 the word "and" is "then." *Webster's Encyclopedic Unabridged Dictionary of the*
 22 *English Language* (1996 ed.) at 77. The ordinary meaning of the word "then" is
 23 "immediately soon afterward" or "next in order of time." *Id.* at 1967.

24 Such a reading of the statute is necessary in order to reasonably limit the scope
 25 of prohibited conduct. Without a limited or temporal nexus between travel and act, §
 26 2423(c) would have almost infinite reach and apply to conduct that occurred years
 27 after an American traveled or resettled abroad. Such unlimited reach was not
 28 intended by Congress because, as discussed above, the legislative history suggests

1 the primary purpose in enacting § 2423(c) was to target and prevent “sex tourism,” an
 2 illicit activity that by definition occurs soon after travel to a foreign destination.²

3 Had Congress so intended, it certainly had the linguistic tools available to craft
 4 a statute that was broad in scope and time. *United States v. Custis*, 511 U.S. 485
 5 (1994); *City of Milwaukee v. Illinois and Michigan*, 451 U.S. 304 (1981); *United*
 6 *States v. Cabaccang*, 332 F.3d 622 (9th Cir. 2003); *United States v. Corey*, 232 F.3d
 7 1166 (9th Cir. 2000)(supporting the proposition that Congress knows how to draft a
 8 statute consistent with its intent when it so desires).

9 For example, if Congress had intended to create a statute that was far reaching
 10 in scope and time, it would have used the clause “at any time” in place of the
 11 conjunctive “and” in the statute. Thus, § 2423(c) would punish persons who travel
 12 “and at any time thereafter” engage in illicit sexual conduct. There are numerous

13
 14 ² 18 U.S.C. § 2423(c) went into effect on April 30, 2003 as part of the
 15 wide-sweeping “Prosecutorial Remedies and Other Tools to End the Exploitation of
 16 Children Today Act” (PROTECT Act). See Pub.L. 108-21, § 105 (2003). Because
 17 the PROTECT Act covered a wide range of criminal justice and national security
 18 topics, there was little discussion regarding § 2423(c). But, the House Report
 19 suggests that the provision was designed to prevent “sex tourism.” The goal was to
 20 design a provision that would eliminate the need for the government to prove that the
 21 “defendant traveled ‘for the purpose’ of engaging in the illegal activity.” Under this
 22 bill the Government would only have to prove that the defendant engaged in illicit
 23 sexual conduct with a minor while in a foreign country.” H.R. Rep. No. 107-525, at 2
 24 (2002). Congress noted that “[t]his legislation will close significant loopholes in the
 25 law that persons who travel to foreign countries seeking sex with children are
 26 currently using to their advantage in order to avoid prosecution.” *Id.* at 3. Although
 27 there is no statutory definition of “sex tourism,” experts studying this problem define
 28 it as organized tourism, with the primary purpose of facilitating a commercial sex
 relationship. For example, the United Nations defines “child-sex tourism” as
 “tourism organized with the *primary purpose* of facilitating the effecting of a
 commercial-sexual relationship with a child.” *Report of the Special Rapporteur on*
the Sale of Children, Child Prostitution and Child Pornography, United Nations
 Economic and Social Council, Commission on Human Rights, 52d Sess., n.6, ¶ 56,
 U.N. Doc.E/CN.4/1996/100 (1996) (emphasis added). The World Tourism
 Organization has defined “sex tourism” as “trips organized within the tourism sector,
 or from outside the sector but using its structures and networks, with the *primary*
purpose of effecting a commercial sexual relationship by the tourist with residents at
 the destination.” Jonathan Todres, *Prosecuting Sex Tour Operators in U.S. Courts in*
an Effort to Reduce the Sexual Exploitation of Children Globally, 9 B.U. Pub. Int.
 L.J. 1, 2-3 (1999) (quoting WTO statement on the Prevention of Organized Sex
 Tourism, Gen’l Assembly of the World Tourism Congress, 11th Sess., Res.
 A/Res/338 (XI) (Oct. 17, 1995) (emphasis added)).

1 examples of statutes that contain such “at any time language.” *See, e.g.*, 18 U.S.C. §
2 157(3), 18 U.S.C. § 207(f)(2), 18 U.S.C. § 551, 18 U.S.C. § 922(k), 18 U.S.C. §
3 1202(a).

4 A similar analogy can be made to the doctrine of continuing offenses that also
5 requires explicit use of statutory terms of art in order to create offenses that are not
6 bound by time. “A continuing offense . . . is an unlawful course of conduct that does
7 endure . . .” *United States v. Morales*, 11 F.3d 915 (9th Cir. 1993). In such cases,
8 explicit language is required to make an offense a continuing one. An offense should
9 not be deemed continuous “unless the explicit language of the substantive criminal
10 statute compels such a conclusion, or the nature of the crime involved is such that
11 Congress must assuredly have intended that it be treated as a continuing one.” *Id.*

12 Section 2423(c) is not a statute whose language “clearly contemplates a
13 prolonged course of conduct.” *United States v. Toussie*, 397 U.S. 112,120 (1970).
14 Examples in this category include statutes that punish: a foreign seaman who
15 unlawfully “remains” in the United States, *see United States v. Cores*, 356 U.S. 405,
16 408 (1958) (“the crucial word ‘remains’ permits no connotation other than
17 continuing presence”); and a deported alien who “is at *any time found in*” this
18 country, *see United States v. Rincon-Jimenez*, 595 F.2d 1192, 1194 (9th Cir.1979)
19 (“This language explicitly makes it a crime for an alien to remain in this country after
20 an illegal entry.”) (emphasis added).

21 By contrast to the above examples, the language of § 2423(c) contains no
22 express or explicit language that demonstrates a congressional intent to create a
23 statute to punish acts occurring “any time” after completed travel. This is not a
24 statute in which Congress has expressly commanded that the offense be deemed to
25 continue in time. Here, construing the statute to reach Mr. Pepe whose alleged
26 conduct occurred almost eight months after his return to place of residence in
27 Cambodia, and did not travel as part of an organized tour or otherwise use any of the
28 other networks or structures of the tourism sector, but rather to permanently resettle

1 there, creates serious constitutional doubt under existing Supreme precedent as well
2 as violates the rule of lenity.

3 To avoid the serious constitutional problems the statute should be read to
4 contain some temporal nexus between travel and act. The statute should be narrowly
5 applied to individuals who engage in illicit sexual conduct relatively soon after travel
6 ends, rather than individuals, such as Mr. Pepe, who have spent many years in the
7 foreign country with no immediate plans to return permanently to the United States.

8
9 B³

10 **Mr. Pepe's Prosecution Based on His Alleged Conduct in Cambodia Violates**
11 **International Law, and Therefore this Court Lacks Jurisdiction Over the**
12 **Prosecution.**
13

14 Even assuming that this Court were to rule § 2423(c) a proper exercise of
15 constitutional authority, this Court nonetheless lacks jurisdiction over the prosecution
16 because the exercise of jurisdiction violates international principles and would be
17 "unreasonable."
18

19 **1. The Exercise of Jurisdiction is Inappropriate Under Any of the Five Bases**
20 **of International Law.**
21

22 Even assuming that this limit on the extraterritorial application of a federal
23 statute is overcome by the inclusion of the "travels in foreign commerce" element, the
24 jurisdictional reach of § 2423(c) extraterritorially violates international law
25

26 ³ Mr. Pepe understands that consideration of the remaining challenges to
27 18 U.S.C. § 2423(c) by this Court is foreclosed by the majority decision in *Clark*,
28 which upheld the constitutionality of § 2423(c). The Supreme Court has not yet
addressed the constitutionality of the statute. Mr. Pepe raises the following
arguments to preserve them for further review.

1 principles. *See United States v. Vasquez-Velasco*, 15 F.3d 833, 839 (9th Cir. 1994)
2 citing *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 21-
3 22 (1963). International law recognizes several bases on which the exercise of
4 extraterritorial jurisdiction may be appropriate. They are: (1) the “territorial
5 principle,” under which jurisdiction is based on the place where the offense is
6 committed; (2) the “nationality principle,” under which jurisdiction is based on the
7 nationality or national character of the offender; (3) the “protective principle,” which
8 provides for jurisdiction over acts committed outside the country that harm the
9 country’s interests; (4) the “passive personality principle,” which provides for
10 jurisdiction based on the nationality of the victim; and (5) the “universality
11 principle,” which provides for jurisdiction over extraterritorial acts by a citizen or
12 non-citizen that are so heinous as to be universally condemned by all civilized
13 nations. *Id.* at 839.

14 Here, the alleged conduct, having sex with Cambodian minors, took place in
15 Cambodia. Neither the territorial nor passive personality principle thus applies. Nor
16 does the charged conduct harm the country’s national security, political, or economic
17 interests (protective principle).

18 19 **2. Exercise of Jurisdiction Would Be Unreasonable.**

20
21 Even assuming that this Court finds jurisdiction based solely on Mr. Pepe’s
22 citizenship, compliance with international law also requires a finding of
23 “reasonableness.” Factors that may be relevant to reasonableness include the
24 “character of the activity to be regulated, the importance of regulation to the
25 regulating state, the extent to which other [countries] regulate such activities, and the
26 degree to which the desirability of such regulation is generally accepted,” “the extent
27 to which another [country] may have an interest in regulating the activity,” “the link
28 of the activity to the territory of the regulating state,” and “the likelihood of conflict

1 with regulation by another [country]. *Vasquez-Velasco*, 15 F.3d at 840 (citing
2 Restatement (Third) of Foreign Relations Law of the United States § 403(2)).

3 Here, the legislation deals with a criminal act against foreign nationals, which
4 has no direct relation to the United States' security, economic, or national interests.
5 Rather, the alleged conduct "affect[ed] the peace and good order" of the particular
6 community in which it was allegedly committed, *i.e.*, Cambodia. *United States v.*
7 *Bowman*, 260 U.S. 94, 97-98 (1922). Thus, there is every reason for Cambodia to
8 exercise jurisdiction (which, in fact, it did), and not the United States. *See* H.R. Rep.
9 No. 107-525, at 3.

10
11 **3. The Exercise of Jurisdiction Would Also Violate the Fifth Amendment's**
12 **Due Process Clause.**

13
14 In addition, compliance with international law does not "conclusively
15 determine whether due process is satisfied." *United States v. Davis*, 905 F.2d 245,
16 249 n. 2 (9th Cir.), *cert. denied*, 498 U.S. 1047 (1991). To comply with the "due
17 process clause of the Fifth Amendment, extraterritorial application of federal criminal
18 statutes requires the government to demonstrate 'a sufficient nexus between the
19 defendant and the United States so that such application would not be arbitrary or
20 fundamentally unfair.'" *Id.* at 248-49 (citation omitted); *United States v. Juda*, 46
21 F.3d 961, 966 (9th Cir.1995). The nexus requirement "serves the same purpose as
22 the 'minimum contacts' test in personal jurisdiction. It ensures that a United States
23 court will assert jurisdiction only over a defendant who 'should reasonably anticipate
24 being haled into court' in this country." *United States v. Klimavicius-Viloria*, 144
25 F.3d 1249, 1257 (9th Cir.), *cert. denied*, 528 U.S. 842 (1999) (citation omitted); *see*
26 *also United States v. Khan*, 35 F.3d 426, 430 (9th Cir. 1994) ("To meet the nexus
27 requirement, the government must show that the plan for shipping drugs was likely to
28 have effects in the United States."). Thus, there is a "notice" as well as a "sufficient

1 connection” with the United States component in the due process analysis.

2 Here, there is no nexus between the crime against a foreign national and the
3 United States. While the United States may have a moral interest in aiding other
4 countries with their sex tourism problems, sex acts with private individuals in those
5 countries have no domestic effect on the United States’ security, political, or
6 economic interests. Especially given the almost eight month lapse of time in this
7 case, the application of section 2423(c) would be arbitrary and fundamentally unfair
8 and thus does not comport with due process.


9 V.

10 CONCLUSION

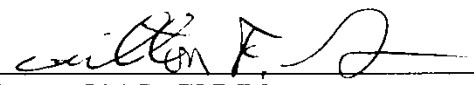
11 In Mr. Pepe’s case, almost eight months elapsed between the completion of his
12 last “travel” and the time the acts are alleged to have occurred. Mr. Pepe contends
13 that such a span of time between travel and act makes jurisdiction under § 2423(c)
14 improper because the alleged conduct had no rational connection to foreign
15 commerce. Moreover, fundamental principles of statutory construction require the
16 statute to contain a reasonable time limit between travel and act. Further, this Court
17 lacks jurisdiction over this prosecution because the exercise of jurisdiction violates
18 international law, would be unreasonable, and violates the Due Process
19 Clause of the Fifth Amendment.

20
21 Respectfully submitted,
22 SEAN K. KENNEDY
Federal Public Defender

23 DATED: October 3, 2007

24 By 
CHARLES C. BROWN
Deputy Federal Public Defender

25
26 DATED: October 3, 2007

27 By 
CARLTON F. GUNN
28 Deputy Federal Public Defender

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE DALE S. FISCHER, JUDGE PRESIDING

United States of America,)

Plaintiff,)

)

vs.)

Case No. CR 07-168-DSF

)

Michael Joseph Pepe,)

Defendant.)

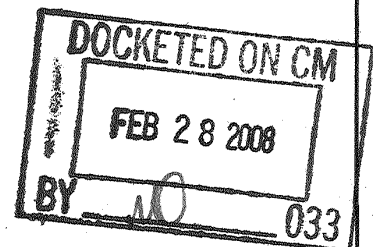
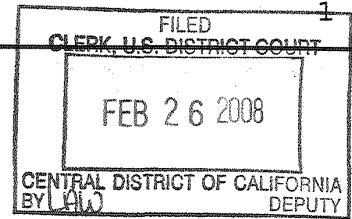
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, October 29, 2007

Pamela A. Seijas, CSR, FCRR
Official Reporter
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ORIGINAL

133

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1 Los Angeles, California, Monday, October 29, 2007

2 10:07 a.m.

3 -oOo-

4 THE CLERK: Calling Item No. 7, CR 07-168-DSF, *United*
5 *States of America vs. Michael Joseph Pepe.*

6 Counsel, please state your appearances.

7 MS. DONAHUE: Good morning, Your Honor. Patricia
8 Donahue and John Lulejian on behalf of the Government.

9 MR. BROWN: Good morning, Your Honor. Charles Brown
10 and Carl Gunn on behalf of Mr. Pepe, who is present.

11 THE COURT: Good morning. Good morning, Mr. Pepe.

12 MR. BROWN: Your Honor, would it be possible to have
13 Mr. Pepe unshackled for the hearing this morning?

14 THE COURT: Well, it looks like it probably is. Any
15 problem with that from the Marshal's service?

16 THE MARSHAL: On your order, ma'am.

17 THE COURT: Thank you.

18 MR. BROWN: Thank you, Your Honor.

19 THE COURT: The gentleman's name, would you spell it
20 for me?

21 MS. DONAHUE: Yes, Your Honor. L-U-L-E-J-I-A-N.

22 THE COURT: We are here only now on the motion to
23 suppress, as I understand it?

24 MS. DONAHUE: Yes, Your Honor. And thank you very
25 much for accommodating us, given the Court's calendar. If the

1 Government would -- if the Court would like -- I apologize -- to
2 only receive the testimony of Assistant Attache Phillips and put
3 everything else over to another day or another time, whatever,
4 at the Court's convenience. Your clerk contacted us, and I
5 explained to him that Mr. Phillips is here from Cambodia, and we
6 appreciate the Court accommodating us, but obviously -- or if
7 the Court would like to put the entire matter over to another
8 day, Mr. Phillips will be here for a couple more days.

9 THE COURT: Well, I had some questions about the
10 motion and was going to just let you know what those were in
11 advance and handle it all together, thinking that was easier for
12 all of you. But that's -- it's not a problem. Why don't we
13 just proceed with what we have here, and we will see how far we
14 get?

15 MS. DONAHUE: Attache Phillips submitted -- we
16 submitted a declaration of his in connection with the
17 Government's opposition. We submit that declaration and the
18 exhibit as his direct-examination. He is here in court
19 available for cross-examination by defense counsel. The
20 Government would ask if the Court is going to take the testimony
21 from Attache Phillips, that the courtroom be cleared of people
22 unconnected with the case under 18 U.S.C. 3509(d) which covers
23 privacy rights of child victims. It -- I obviously can't know
24 completely what Mr. Gunn is going to ask Attache Phillips, but
25 it may be that it will cause him to discuss the identifying

1 information regarding the victims, and that is clearly protected
2 under 3509(d).

3 MR. GUNN: I don't have any objection, Your Honor. I
4 don't envision specific questions aimed at that, but of course
5 you never know what answers might come out for sure. So I
6 suppose it's a possibility.

7 THE COURT: All right.

8 MR. GUNN: I have no feeling one way or the other
9 about it.

10 THE COURT: I don't like to close courtrooms unless
11 there is a real reason to close courtrooms. You have stated a
12 potential reason, and why don't you just advise Mr. Phillips
13 what would fall into that category, and if he is about to say
14 something that would fall within that category, we will seal the
15 courtroom temporarily as opposed to just doing it.

16 MS. DONAHUE: Thank you, Your Honor.

17 THE COURT: All right.

18 MR. GUNN: I did, Your Honor, want to move to exclude
19 witnesses, and I mentioned that to the Government, and they
20 indicated that, well, there's three case agents in the matter
21 and both witnesses are case agents. I think under the rule
22 about exclusion of witnesses, the idea is that one case agent
23 gets to remain in the courtroom, not however many they want to
24 call case agents so I would ask to exclude all witnesses except
25 one case agent.

1 THE COURT: Why don't you --

2 MS. DONAHUE: There are two case agents, but it's
3 really not a big deal.

4 THE COURT: Why don't you designate one and --

5 MS. DONAHUE: That's fine.

6 MR. GUNN: I was thinking of questioning Agent Wang
7 first, unless that is going to be a problem.

8 MS. DONAHUE: We have Attache Phillips here from
9 Cambodia. Special Agent Wang is based in Los Angeles and can
10 come to court any time. It's much more difficult with Phillips.
11 So given the Court's schedule, we would propose --

12 THE COURT: Why don't we make sure we get Mr. Phillips
13 done?

14 MR. GUNN: If we could have him designated as the case
15 agent for today so it doesn't defeat the purpose of exclusion of
16 witnesses, I would appreciate it.

17 THE COURT: I am not going to tell the Government who
18 they have to designate for what so they can have one person in
19 here. I don't know who you need for what.

20 MS. DONAHUE: It's no big deal. We have no objection,
21 Your Honor. That's fine.

22 THE COURT: Whoever should leave, should leave.

23 THE CLERK: Please raise your right hand to be sworn.

24 Gary Phillips, Government's witness, was sworn

25 THE CLERK: Please be seated. Please state your full

1 name and spell your first and last name for the record.

2 THE WITNESS: Good morning, Your Honor. Good morning,
3 everybody. My name is Gary Phillips. P-H-I-L-L-I-P-S.

4 THE COURT: You may proceed.

5 MR. GUNN: Thank you, Your Honor. If I could approach
6 with some exhibits to be marked for identification?

7 THE COURT: Yes. Has Ms. Donahue seen them?

8 MR. GUNN: I just handed her a copy. They are
9 materials I got in discovery from the Government. Does the
10 Court want me to start with 101? That's what I normally do. If
11 we could have 101, 102, 103 in the order I have given, and I
12 have copies for the Court as well as for the witness. 101 would
13 be the newspaper article, 102 would be the document with
14 "Attachment," and 103 would be the document "Supplemental
15 Warrant."

16 (Defendant's Exhibits 101, 102 and 103 were marked.)

17 CROSS-EXAMINATION

18 BY MR. GUNN:

19 Q. Agent Phillips?

20 A. Yes, sir.

21 Q. Among the items you found in Mr. Pepe's house were a number
22 of *Cambodian Daily* newspapers; isn't that correct?

23 A. I did not find those articles.

24 Q. Among the items that were found in Mr. Pepe's house were a
25 number of *Cambodian Daily* newspapers; correct?

1 A. A few.

2 Q. And *Cambodian Daily* is the name of the newspaper; right?

3 A. Yes.

4 Q. And that's an English language paper they publish in
5 Cambodia; correct?

6 A. Dual.

7 Q. I'm sorry?

8 A. English and Khmer.

9 Q. And Defense Exhibit 101 is a page from one of those
10 newspapers; correct?

11 THE COURT: From the Cambodia newspaper or one that
12 was found --

13 MR. GUNN: I'm sorry. Let me be clear, Your Honor.

14 Q. Defense Exhibit 101 is a page from one of the *Cambodian*
15 *Daily* newspapers that was found in Mr. Pepe's house; correct?

16 A. Is this 101, this paper you are referring to?

17 Q. Yes.

18 A. I can't really say I remember this article.

19 Q. So you're not sure?

20 A. I would have to look through the evidence.

21 Q. Does the fact that there is a Bates stamp number on the
22 document suggest anything to you?

23 A. Yeah. It's part of the case.

24 MR. GUNN: I'll move on, Your Honor, and come back to
25 that with the next witness then.

1 Q. Would you look at Defense Exhibit 102, the document that
2 has "Attachment" in the center about a third of the way down?

3 A. I only have three pages here.

4 Q. And one of them is a Cambodian National Police document
5 that has the word "Attachment" about a third of the way down?

6 A. Can you refer to which numbers?

7 Q. It should be 102, if the numbers are written on it.

8 A. Maybe, sir, I'm not seeing somebody.

9 THE COURT: 806.

10 MR. GUNN: The Bates number on the bottom would be
11 806.

12 THE WITNESS: 806. Yes, sir.

13 BY MR. GUNN:

14 Q. Do you have that in front of you?

15 A. I do.

16 Q. That's a translation of an attachment prepared by the
17 Canadian prosecutor listing some of the evidence in the case;
18 correct?

19 THE COURT: Canadian?

20 MR. GUNN: I'm sorry. Cambodia if I said Canadian,
21 Your Honor.

22 THE WITNESS: I haven't seen this document.

23 BY MR. GUNN:

24 Q. So you don't know?

25 A. I don't know, sir.

1 Q. Would you look at Defense Exhibit 103. That's the document
2 with a Bates page 10154 or Bates No. 10154 at the bottom of the
3 document in the middle. Do you have that in front of you?

4 A. I do, sir.

5 Q. And that's a translation of a document prepared by the
6 Cambodian police listing some of the evidence in this case,
7 isn't it?

8 A. Sir, I didn't do the translation, so I don't know.

9 Q. So you don't recognize that document?

10 A. Not this particular document.

11 MR. GUNN: I will come back to this with the other
12 witness, Your Honor.

13 THE COURT: Thank you.

14 BY MR. GUNN:

15 Q. You can set those aside, Agent Phillips.

16 A. Thank you.

17 Q. You talk in your declaration about two days the Cambodian
18 police were at Mr. Pepe's house; correct?

19 A. Yes, sir.

20 Q. One was June 17th?

21 A. Yes, sir.

22 Q. The other was June 19th?

23 A. Yes, sir.

24 Q. Only one of the alleged victims was at the house when
25 people went there on June 17th; correct?

1 A. There were two people there.

2 Q. Only one of the alleged victims?

3 A. I consider both victims.

4 Q. Only one of the alleged victims who is named in a count of
5 the Indictment?

6 A. Yes. That's correct, sir.

7 Q. And the police found other alleged victims who are named in
8 the counts of the Indictment living at the house on June 18th,
9 the next day, didn't they?

10 A. No.

11 Q. Did the police at some point find or locate other alleged
12 victims living at the house?

13 A. In the house?

14 Q. Yes. Let me rephrase the question. Did the police at some
15 point locate other alleged victims at the house, meaning the
16 police located them at the house?

17 A. I don't know where they were located.

18 Q. Do you recall your -- going back to your declaration in
19 this matter, you attached a translation of a Cambodian police
20 report to that declaration as an exhibit, didn't you?

21 A. I believe I did, yes, sir.

22 Q. Is it fair to say you consider that report to be accurate?

23 A. Yes.

24 Q. That report refers to a, quote, combined force, unquote,
25 that conducted the search, does not it?

1 A. I would have to see the document.

2 Q. Okay. Would it refresh your memory if you saw the
3 document?

4 A. Certainly.

5 Q. Do you have your declaration with you?

6 A. Yes, sir, I do.

7 Q. Would you pull it out and look at just your declaration
8 with the exhibit attached?

9 A. What exhibit number, sir?

10 Q. I'm sorry?

11 A. Which exhibit number?

12 Q. Well, it's a report attached, I believe, as Exhibit A. We
13 just -- agreed; right?

14 A. Yes, sir.

15 Q. Okay. Does that refresh your memory about whether the
16 report refers to a combined force that conducted the search?

17 A. This is -- yeah. I see -- I see the words "combined
18 force." I do see that.

19 Q. All right. And it then has a list of people, doesn't it?

20 A. Yes, sir, it does.

21 Q. And one of those people on the list is you; right?

22 A. Yes, sir.

23 Q. And another is an American official named Andy Simpson;
24 right?

25 A. Yes, sir.

1 Q. It says "Embassy Representative" by his name?

2 A. Yes, sir.

3 Q. And he was a representative of the American embassy;
4 correct?

5 A. Correct.

6 Q. And the report describes you and Mr. Simpson and the other
7 people in the list as, quote, participants, doesn't it?

8 A. This report?

9 Q. Yes.

10 A. That's what this report says.

11 Q. And it doesn't describe you as just observers, does it?

12 A. I didn't write this report. It says "participants."

13 Q. Not observers; correct?

14 A. Correct.

15 Q. Now, you do agree you were present at the search, don't
16 you?

17 A. Yes, sir, I was present.

18 Q. And you were -- you agree you were taking photos; correct?

19 A. That's correct.

20 Q. You took quite a few photos?

21 A. Yes, sir.

22 Q. You also used your participation to get detailed
23 information about the layout of that house, didn't you?

24 A. I drew a blueprint, yes, sir.

25 Q. You made -- well, you made detailed notes about how the

1 house was laid out; right?

2 A. Yes, sir.

3 Q. And you made a detailed diagram; correct?

4 A. I'm talking about the diagram.

5 Q. Well, you made a list of note about things that were in the
6 house; right?

7 A. Yes, sir.

8 Q. In text, in writing; right?

9 A. Yes, sir.

10 Q. And you also made a detailed diagram; right?

11 A. Yes, sir. That's correct.

12 MR. GUNN: Your Honor, could I have another exhibit
13 marked for identification?

14 THE COURT: Yes.

15 MR. GUNN: If I could approach the clerk and if we
16 could have this marked as 104. And there is an extra copy for
17 the Court.

18 THE COURT: Thank you.

19 (Defendant's Exhibit 104 was marked.)

20 BY MR. GUNN:

21 Q. Do you have that in front of you, Agent Phillips?

22 A. I do, sir.

23 Q. That's a two-page document; correct?

24 A. That's correct.

25 Q. And the first page are some handwritten notes you made

1 about things you observed in the house, sort of geographically
2 or logistically; right?

3 A. Yes, sir.

4 Q. And the second page is a diagram that you drew of the
5 house; correct?

6 A. That's correct.

7 Q. And that's something you did while you were present at the
8 searches; correct?

9 A. That's correct.

10 Q. You also selected at least some items to be seized, didn't
11 you?

12 A. I -- yes, one of them, yes.

13 Q. In fact, there is a videotape of part of the search that
14 shows that, isn't there?

15 A. Yes, sir.

16 MR. GUNN: Your Honor, I would like to, if we could,
17 have it identified for the record as Defense Exhibit 105, and I
18 will obviously give it to the clerk when we are done. I now
19 have it in the computer. If I could play a portion from the CD
20 that has that videotape on it?

21 THE COURT: If there is no objection, you may.

22 MS. DONAHUE: There is no objection.

23 THE COURT: Thank you.

24 (Defendant's Exhibit 105 was marked.)

25 THE COURT: Is there sound to this?

1 MR. GUNN: There is sound, Your Honor, and I can put
2 on the record the time we start on the disk and the time we end
3 so that will be in the record. I don't know if it needs to be
4 transcribed. However the Court wants to proceed.

5 THE COURT: Ms. Donahue?

6 MS. DONAHUE: I believe some of the sound is a
7 considerable conversation in Khmer, which I don't think the
8 court reporter could transcribe anyway, so we see no reason to
9 have it transcribed.

10 THE COURT: The court reporter will not report it.

11 MR. GUNN: I'm sorry. If I could have Mr. Brown go to
12 Minute 16, Second 20 on the CD -- CD 3 of three CD's that are on
13 the disk. If we could go to 16:20 and play from there through
14 16:30.

15 (Whereupon, the video was played)

16 MR. GUNN: Stop there.

17 Q. That was you tossing a stuffed animal into the pile to be
18 taken; correct?

19 A. Yes.

20 MR. GUNN: If I could now have Mr. Brown go to 26:00
21 on the same CD. That should be fine. If we could play through
22 26:15.

23 (Whereupon, the video was played)

24 MR. GUNN: And stop there.

25 Q. That was you adding a paper to the pile to be taken, wasn't

1 it?

2 A. Yes. Toward the end, yes, sir.

3 Q. You also took a wooden carving of a fish that was in the
4 house, didn't you?

5 A. I did not.

6 Q. Didn't you have to explain to the owner why you needed to
7 take the wooden fish because she didn't want you to take it at
8 first?

9 A. Yes, I did. But I did not take it.

10 Q. But you were the one who explained to her why it was
11 needed?

12 A. Yes.

13 Q. And it was at your direction or desire that it was taken;
14 correct?

15 A. It was not at my direction.

16 Q. But you were the one who explained to her why it needed to
17 be taken?

18 A. Yes.

19 Q. You also personally looked through Mr. Pepe's -- or at
20 least some of Mr. Pepe's papers during the search, didn't you?

21 A. That's correct.

22 MR. GUNN: Your Honor, could I have Mr. Brown go to
23 28:15 on the same CD, CD 3, on Defense Exhibit 105 and play
24 through 28:40. I think 28:20 would be -- through 28:40 would be
25 fine.

1 (Whereupon, the video was played)

2 MR. GUNN: If we could stop there, Your Honor.

3 Q. That was you looking through the papers in that folder;
4 correct?

5 A. Yes, it was.

6 MR. GUNN: If I could have Mr. Brown go to 30:05 on CD
7 3 on Defense Exhibit 105, Your Honor, and play through 31:00.
8 30:06 would be fine.

9 (Whereupon, the video was played)

10 MR. GUNN: If we could stop there, Your Honor.

11 Q. That was you looking through papers on that table; correct?

12 A. Yes, it was.

13 Q. And you actually laid out particular papers to take
14 individual photographs of them during the search; correct?

15 A. I did. I did take photos.

16 MR. GUNN: Your Honor, could I approach and have some
17 exhibits marked for identification?

18 THE COURT: Yes.

19 MR. GUNN: These, Your Honor, would be 106 through
20 110, if that's all right. I've written the numbers just by hand
21 for the time being.

22 (Defendant's Exhibits 106 through 110 were marked.)

23 BY MR. GUNN:

24 Q. Would you look at Defense Exhibit 106 through 110.

25 A. Okay.

1 Q. Those are photographs you took of individual papers during
2 the search; correct?

3 A. Yes.

4 Q. You also gave instructions to others at times during the
5 search, didn't you?

6 A. On one occasion.

7 MR. GUNN: Your Honor, if I could have Mr. Brown go to
8 2:40 -- Minute 2, Second 40 on the CD, CD 3 again, on Defense
9 Exhibit 105, and I will tell Mr. Brown when to stop, if I may.

10 For the record, we are showing it at 2:30.

11 (Whereupon, the video was played)

12 MR. GUNN: Stop there.

13 Q. Did you hear the voice saying in English, "Before they move
14 anything, I need to put the ruler down. Okay"?

15 A. If you could play it back?

16 MR. GUNN: If we could play it back, Your Honor --

17 THE COURT: All right.

18 MR. GUNN: From 2:30. I would like you to listen for
19 those words, and if we could turn the volume up. 2:33 would be
20 fine.

21 (Whereupon, the video was played)

22 BY MR. GUNN:

23 Q. Did you hear it that time?

24 A. Yeah, I did.

25 Q. That was your voice; correct?

1 A. Yes.

2 MR. GUNN: If I could have Mr. Brown go to Minute 8,
3 Second 00 on Defense Exhibit 105, Your Honor, and I will tell
4 Mr. Brown where to pause, if I may. I am going to be asking you
5 something again about what was said and who said it, so if you
6 could be listening to the voices, Agent Phillips.

7 (Whereupon, the video was played)

8 MR. GUNN: If you could stop there.

9 Q. Did you hear the words, "Let me look at it under alternate
10 light"? Did you hear those words?

11 A. Yes.

12 Q. That was you speaking; correct?

13 A. Yes.

14 MR. GUNN: If I could continue playing, Your Honor,
15 from here.

16 (Whereupon, the video was played)

17 MR. GUNN: If we could pause there, Mr. Brown.

18 Q. That was you telling people to close the curtains; correct?

19 A. Yes, yes.

20 MR. GUNN: If we could continue playing, Your Honor,
21 through 9:10 on CD 3 on Defense Exhibit 105.

22 (Whereupon, the video was played)

23 BY MR. GUNN:

24 Q. That's you looking at the mattress with a special light;
25 correct?

1 A. Yes, sir.

2 MR. GUNN: If we could stop it there, Your Honor. For
3 the record, it was stopped at 9:14, I guess.

4 If I could now have Mr. Brown go to 36:00 on CD 3 of
5 Defense Exhibit 105, that would be fine, 3557.

6 (Whereupon, the video was played)

7 MR. GUNN: I would like you to listen again, Agent
8 Phillips, as well as watch.

9 THE WITNESS: Sure.

10 MR. GUNN: If we could stop there.

11 Q. The person saying, "This is what she described yesterday,"
12 that was you; correct?

13 A. Yes. But you need to play it a little more.

14 Q. I am going to play it a little bit more.

15 (Whereupon, the video was played)

16 MR. GUNN: If we could stop there.

17 Q. Did you hear the voice, "We need to take that"?

18 A. I heard was -- what I said was can -- "Can we take that?"

19 Q. You actually said, "We need to take that."

20 A. I think I said "can."

21 MR. GUNN: Can we back up and play it again,
22 Your Honor?

23 THE COURT: Sure.

24 MR. GUNN: Probably if we start at 36:20, we'll catch
25 it. If we could turn the volume up.

1 (Whereupon, the video was played)

2 BY MR. GUNN:

3 Q. You say, "We need to take that"; right?

4 A. What I heard was "can." "Can we take that?"

5 Q. You also heard the word "need," didn't you?

6 THE COURT: Okay. It is what it is.

7 MR. GUNN: All right, Your Honor.

8 Now, I would like you to look at one more part of this
9 videotape of this day. If we could have Mr. Brown, Your Honor,
10 go to 11:10 on CD 3 on Defense Exhibit 105.

11 (Whereupon, the video was played)

12 MR. GUNN: If we could play through 11:40, Your Honor.

13 (Whereupon, the video was played)

14 MR. GUNN: Stop there at 11:40.

15 Q. You are one of the people posing for those photos; correct?

16 A. At their request, yes.

17 Q. The other Caucasian is a man from the International Justice
18 Mission named Ron Dunn; correct?

19 A. Yes.

20 Q. The men you are posing with are several of the Cambodian
21 officials participating in the search; correct?

22 A. Yes.

23 MR. GUNN: All right. We can, I believe, blank the
24 screen on the video, Your Honor, for now.

25 Q. You talked a little bit in your declaration about what

1 knowledge you have of Cambodian search rules; right?

2 A. Yes.

3 Q. And your understanding is that the Cambodian prosecutor and
4 the person whose house is being searched have to be present;
5 correct?

6 A. The prosecutor or the member of the courts.

7 Q. And the person whose house it is?

8 A. Yes, sir.

9 Q. And they have a search warrant requirement like we have a
10 search warrant requirement?

11 A. No.

12 Q. Well, they have a search warrant requirement?

13 A. They do, sir.

14 Q. Different details --

15 A. Different style.

16 Q. You actually knew there wasn't a search warrant at the time
17 of the original search; correct?

18 A. Say that again.

19 Q. You actually know that there wasn't a search warrant at the
20 time of the original search; correct?

21 A. No. There was a search warrant.

22 MR. GUNN: Your Honor, could I have an exhibit marked
23 for identification?

24 THE COURT: Yes.

25 MR. GUNN: If we can call this next in order. I

1 believe that would be 111.

2 (Defendant's Exhibit 111 was marked.)

3 BY MR. GUNN:

4 Q. Do you have Defense Exhibit 111 in front of you?

5 A. Yes.

6 Q. That is a slide from a PowerPoint presentation that you
7 prepared about investigating these types of investigations,
8 isn't it?

9 A. Yes.

10 Q. That presentation included a description of the
11 investigation in this case, didn't it?

12 A. I'm sorry. Could you say that again?

13 Q. Yes. That presentation included a description of the
14 investigation in this case, at least as part of the
15 presentation; right?

16 A. Very brief details.

17 Q. And this slide is one of the slides about this case;
18 correct?

19 A. Yes, sir.

20 Q. You have three little bullet points in that slide; right?

21 A. Yes, sir.

22 Q. The first one says, "After interviewing victims, ICE and
23 other agencies coordinated in the execution of an arrest warrant
24 for Pepe"; correct?

25 A. Yes.

1 Q. The second says, "Immediately after Pepe's arrest, ICE,
2 Bangkok and NGO interviewed several other victims which
3 corroborated statements from other victims"; correct?

4 A. Yes, sir.

5 Q. And the third bullet point says, "Based on additional
6 interviews, CNP obtained a search warrant"; correct?

7 A. Yes, sir.

8 Q. By the way, you also state in that PowerPoint slide that
9 ICE, quote, "coordinated with," unquote -- with the Cambodian
10 police; right?

11 A. Yes, sir.

12 Q. You don't say you were only an observer; right?

13 A. No, sir.

14 Q. You don't say there was just a parallel investigation?

15 A. Not for a PowerPoint, no.

16 Q. Now, you said in your declaration that you knew there was a
17 requirement about the prosecutor and the person whose home was
18 being searched to be present?

19 A. Yes, sir.

20 Q. And you knew there was a search warrant requirement, but it
21 was somewhat different than American search warrant
22 requirements? Was that what your testimony from before was
23 suggesting?

24 A. It's a different style.

25 Q. How did you know those things?

1 A. I have been in Cambodia for five years.

2 Q. And can you tell us how you knew those things?

3 A. I've observed several search warrants. I know the culture.
4 I have been present during meetings with generals and
5 prosecutors, and I have had meetings with judges.

6 Q. And they've talked about search warrant requirements and
7 search requirements? How do you pick this up?

8 A. Through my personal experience of observing search warrants
9 in Cambodia and speaking with my colleagues from the Cambodian
10 National Police, speaking with my investigators from the U.S.
11 embassy who were responsible for liaison -- liaisoning with the
12 Cambodian National Police and the prosecution and the courts.

13 Q. There have been other searches where you observed?

14 A. Yes, sir.

15 Q. And you signed as a witness at one point in this case;
16 right?

17 A. That's correct, sir.

18 Q. And had you signed as a witness in some of the other cases
19 previously?

20 A. Yes, sir.

21 Q. So you knew there was a witness requirement of some sort?

22 A. That's correct, sir.

23 Q. And in this case, there were two spaces for witnesses to
24 sign; right?

25 A. There was many spaces.

1 Q. Many spaces with just the word "witness," or spaces for
2 other types of people like participants or prosecutors?

3 A. I think what I am saying is there was many people who
4 signed. They were all witnesses.

5 Q. Well, you signed a paper that specifically had a space for
6 witness, and that's the space you signed; correct?

7 A. That's where they told me to sign, yes.

8 Q. And there were two places on that document for a, quote,
9 "witness," unquote; correct?

10 A. As I recall, you're correct, sir.

11 Q. Was that also true in the other search warrants that you
12 had observed or participated in?

13 A. Sir, I would have to look through that, but to the best of
14 my knowledge and recollection, that's correct.

15 Q. So you knew there was a witness requirement?

16 A. Yes, sir.

17 Q. And you knew there was a two witness requirement; correct?
18 Or you believed that?

19 A. Yes.

20 Q. And you knew that the witnesses were someone different from
21 the people doing the search; right?

22 A. The witnesses were people who the Cambodian National Police
23 identified to be witnesses.

24 Q. And you knew that was supposed -- or assumed or believed
25 that was supposed to be someone different from the people doing

1 the search; correct?

2 A. I don't know.

3 Q. Did you ever ask about why they were having you sign as a
4 witness in this case or any other case?

5 A. Yes.

6 Q. And what did they tell you?

7 A. It's considered an honor.

8 Q. And why did they tell you it was considered an honor?

9 A. Well, we're in a third-world country, and the United States
10 law enforcement is -- they consider the U.S. to be kind of the
11 leaders of the police of the world, and when we go over there
12 and observe or participate in any type of function, like you saw
13 in the photograph, it's a very common cultural thing that
14 happens in Cambodia and Asia, generally.

15 Q. So it was an honor for them or for you?

16 A. For both, actually.

17 Q. And -- but you knew the witnesses were supposed to be
18 someone other than the police conducting the search; right?

19 A. I don't know, sir.

20 MR. GUNN: No further questions, Your Honor.

21 THE COURT: Ms. Donahue.

22 REDIRECT EXAMINATION

23 BY MS. DONAHUE:

24 Q. Good morning. Attache Phillips, starting with the
25 videotape that you were shown some snippets of, have you

1 reviewed that videotape previously?

2 A. Yes, sir -- yes, ma'am.

3 Q. Were you present at the search when that videotape was
4 taken?

5 A. Yes, I was.

6 Q. Can you please describe generally what that videotape
7 depicts?

8 A. The videotape is generally about a three-hour search,
9 spanning two days of the Cambodian National Police searching the
10 house, putting evidence in certain areas, and me observing what
11 evidence they took, me looking at some of the evidence and
12 taking photographs.

13 Q. And do you recall approximately how many Cambodian National
14 Police officers were present at the search?

15 A. There was quite a few. Probably between 15 and 20.

16 Q. Turning your attention to the first day of the search,
17 June 17, 2006, in addition to yourself and the Cambodian
18 National Police, who else do you recall was present?

19 A. IJM, the International Justice Mission, World Hope
20 International, the Cambodian prosecutor, and the police, the
21 landlords, the village chief, and the maid. There was a gate
22 boy there who was confronted upon entry. And I may be missing
23 one person, but I think that's everybody.

24 Q. Was the defendant present?

25 A. Oh, I'm sorry. That's who I'm missing. Yes, the defendant

1 was present.

2 Q. To your knowledge, was the defendant present during the
3 entire time the search was executed on June 17th?

4 A. He was.

5 Q. And turning your attention to the second day of the search,
6 that was June 19th of 2006; is that correct?

7 A. Yes, ma'am.

8 Q. Who was present on June 19th at the search?

9 A. All of those same people, in addition to Mr. Pepe's
10 Cambodian defense attorney also showed up.

11 Q. And, in fact, on the video, can you see Mr. Pepe's
12 Cambodian defense attorney looking through some of the
13 documents?

14 A. Yes.

15 Q. I would like to turn your attention to a couple of the
16 specific events that you were shown on that videotape, starting
17 with the pink bottle.

18 Do you recall that?

19 A. Yes, I do, ma'am.

20 Q. Can you please explain under what circumstances the pink
21 bottle was seized from the defendant's residence.

22 A. I'd be happy to.

23 What was not shown in the video was a couple seconds
24 before the start of that video. If that would have been shown,
25 that shows me talking with the Cambodian prosecutor and the

1 police asking permission to go and look for the pink bottle, and
2 I was granted that permission, and I went downstairs,
3 accompanied by one of the police officers and another person,
4 and that's when I saw the bottle.

5 And I specifically requested that bottle because one
6 of the victims had indicated to me that that -- the contents of
7 that bottle was used as a -- as a lubricant prior to her being
8 raped by the defendant.

9 Q. Why did you ask permission for the bottle to be taken?

10 A. Because it was not my search warrant, and I thought it
11 was -- I should ask before I actually took something.

12 Q. Did you have the authority to seize that bottle?

13 MR. GUNN: Objection. Calls for a legal conclusion,
14 speculation, Your Honor.

15 THE COURT: As phrased, sustained.

16 BY MS. DONAHUE:

17 Q. To your knowledge, did you believe you had authority to
18 direct the seizure of that bottle?

19 A. No, I did not.

20 Q. Why not?

21 A. Because I wasn't operating as a law enforcement officer as
22 I would in the United States. I was a guest in a host country
23 where I would have -- I do not have that authority.

24 Q. Turning your attention to the scene that showed you
25 standing in front of a table going through documents that were

1 spread out on that table, do you recall that scene?

2 A. Yes, I do.

3 Q. When did that take place?

4 A. That took place at the end of the search, the Cambodian
5 search.

6 Q. By "the end of the search," do you mean on June 19th?

7 A. On June 19th, yes.

8 Q. Why were you going through those documents?

9 A. Because we were told that the Cambodian National Police
10 were going to conclude their search of the residence, and I
11 recall asking if I could go through some of the documents, and I
12 went through the documents as quickly as I could in that little
13 clip which lasted about 30 seconds before I had to stop to see
14 if there was anything that I wanted to photograph, which I did
15 to memorialize in my parallel investigation.

16 Q. The documents that were on the table that you were looking
17 through, was it your understanding that the Cambodian National
18 Police intended to seize those documents?

19 A. My belief at the time was they were going to leave all
20 those documents there because they had finished.

21 Q. Turning your attention to Defense Exhibits 106 through 110,
22 which are the -- appear to be photographs of documents, do you
23 recognize these documents, Defense Exhibits 106 through 110?

24 A. Yes, ma'am.

25 Q. Can you tell us what they are?

1 A. They are handwritten notes. I don't recall from which
2 specific binder, but they were -- I believe they were placed by
3 the computer table, not the center table that you saw me in the
4 video. Some are e-mail addresses, phone numbers.

5 Q. Did you take the photographs that are memorialized in
6 Defense Exhibit 106 through 110?

7 A. Yes, I did.

8 Q. Why?

9 A. In the event that these items did not show up in the
10 evidence later on, I wouldn't have had time to write every one
11 of these things down in my rough notes.

12 Q. And why did you think that these items might not show up in
13 the evidence seized?

14 A. In my experience, unfortunately, in Cambodia, evidence
15 often disappears due to a wide variety of reasons.

16 Q. I would like to turn your attention to the scene, if you
17 recall, where you were moving a stuffed animal.

18 Do you recall that scene?

19 A. Yes, I do.

20 Q. Can you please explain what was going on?

21 A. Yes. Again, if the defense would have shown maybe a minute
22 or so prior to that, when we walked in the room, I observed a
23 Cambodian National Police Officer -- there was a stuffed animal
24 on the bed, and then there was another stuffed animal on the --
25 what do you call -- the dresser. He grabbed it and threw it on

1 the floor.

2 Then at some point later, when they were gathering up
3 everything on the bed to take, I leaned over and I picked it up.
4 And I can't remember exactly what I said, if they wanted to take
5 this or not and threw it on the bed.

6 Q. You also saw another portion of the tape where you were
7 shining a light across what appeared to be a mattress.

8 Do you recall that scene?

9 A. I do.

10 Q. Can you please explain what was going on there.

11 A. Yes. Part of my role as a police officer is a training
12 role. The Cambodian police do not have really any sophisticated
13 means to look for evidence such as biological evidence. I carry
14 my black light all -- everywhere I go, essentially, and I
15 thought it might be a good opportunity to show them how an
16 alternative light source would work.

17 In this particular situation, because we thought there
18 was a blood stain on the sheet which would have soaked through
19 the mattress, so I thought it was a good opportunity to show
20 them that.

21 Q. Did it, in fact, work and show them any stains?

22 A. No. Because when you look in the video, you have to shut
23 the curtains. It was just too light, and it wasn't the greatest
24 of environments to do that. That's why it only lasted about 38
25 seconds.

1 Q. Attache Phillips, I would like to turn your attention to
2 Defense Exhibit 111 which is one page from your PowerPoint
3 presentation.

4 A. Yes, ma'am.

5 Q. Are you one of the authors of this PowerPoint presentation?

6 A. I am one of many.

7 Q. Is this one slide from that presentation?

8 A. Yes, ma'am.

9 Q. What is the purpose of that PowerPoint?

10 A. This is generic training.

11 Q. Training for whom?

12 A. Primarily the Royalty Police, Cambodian National Police. I
13 have sent this over to the Vietnamese Ministry of Public Safety,
14 which are the police. I have used this presentation for the
15 Indonesian police. Mostly the police throughout the Asian
16 region.

17 Q. I would like to turn your attention to the first bullet
18 point which reads, "After interviewing victims, ICE, BKK, NGO
19 and CNP coordinated in the execution of an arrest warrant for
20 Pepe."

21 Just for the record, ICE, BKK -- what does BKK stand
22 for?

23 A. Bangkok.

24 Q. And NGO refers to non-governmental organizations; is that
25 correct?

1 A. Yes, ma'am.

2 Q. Do the non-governmental organizations have any affiliation
3 with ICE?

4 A. No. Except for sometimes they give us information.

5 Q. But they're not United States law enforcement, are they?

6 A. No.

7 Q. When you say, "Coordinated in the execution of an arrest
8 warrant for Pepe," can you explain what you mean by that -- what
9 you meant by that?

10 A. Basically we were made aware of the arrest warrants.

11 Q. And did you participate in the arrest of Pepe in this case?

12 A. I did not.

13 Q. Who arrested him?

14 A. Cambodian National Police arrested him.

15 Q. Did you advise the Cambodian National Police to arrest him?

16 A. No, I did not.

17 Q. Turning your attention to the second bullet point in the
18 PowerPoint slide which is Defense Exhibit 111, immediately -- it
19 states, "Immediately after Pepe's arrest, ICE, Bangkok and NGO
20 interviewed several other victims which corroborated statements
21 from other victims."

22 Are you referring there to your own interview with
23 victims in this case?

24 A. Yes.

25 Q. Did you conduct those interviews with the Cambodian

1 National Police?

2 A. No, I did not.

3 MR. GUNN: Objection. Leading, Your Honor.

4 I will withdraw the objection.

5 THE COURT: Overruled.

6 BY MS. DONAHUE:

7 Q. The third point there which reads, "Based on additional
8 interviews, CNP obtained a search warrant for his house and
9 executed additional arrest warrants," did you mean to suggest
10 that the CNP did not obtain a search warrant until sometime
11 after June 17, 2006?

12 A. No, not at all.

13 Q. Did the CNP have a search warrant on June 17, 2006?

14 A. Yes, they did.

15 Q. How do you know that?

16 A. I know it from a number of reasons. Number 1, when they
17 were executing the arrest of Mr. Pepe, I was informed by --

18 MR. GUNN: Objection, Your Honor. Hearsay. Move to
19 strike -- well, I haven't gotten there yet, but objection is
20 hearsay as to what he was informed.

21 MS. DONAHUE: Hearsay is admissible, Your Honor. It's
22 a suppression motion. This is not trial.

23 MR. GUNN: The Court has discretion, and I think -- I
24 would urge -- the courts can apply their discretion. I would
25 urge the Court to do it, especially in this context where the

1 other witnesses aren't available, and I think that would be what
2 I would suggest to the Court.

3 THE COURT: Go ahead and answer the question.

4 THE WITNESS: I received information that Ron Dunn was
5 on the telephone. I was sitting next to him. He was talking to
6 the police. He said that they had a warrant. In addition, once
7 we were told that there was going to be a warrant, we went over
8 to the residence, waited there until the prosecutor and the
9 defendant showed up with the police. And I know, through being
10 in Cambodia for five years, you cannot execute the warrant
11 without the defendant there and the police, and when all those
12 people arrived, including the prosecutor, that's when the
13 warrant was executed. So by those people being there and the
14 witnesses, I knew that they had a warrant.

15 BY MS. DONAHUE:

16 Q. Approximately what time did they begin executing the
17 warrant on June 17th?

18 A. Approximately at 13:20 or 1:20 in the afternoon.

19 Q. Did the CNP finish executing the warrant that day?

20 A. No, ma'am, they did not.

21 Q. How did they stop on June 17th?

22 A. They just literally stopped and told everybody that we're
23 going to stop and they did, and they sealed up the door and
24 left.

25 Q. Did you leave as well?

1 A. Yes, ma'am, I did.

2 Q. Did you return to the defendant's residence?

3 A. Yes.

4 Q. When?

5 A. On the 18th.

6 Q. Why did you come back on the 18th?

7 A. Because I was told that they were going to continue the
8 search warrant on the next day, which was the 18th.

9 Q. When you say "they," you mean the Cambodian National
10 Police?

11 A. The Cambodian National Police.

12 Q. Did the Cambodian National Police continue executing the
13 warrant on June 18th?

14 A. No, they did not.

15 Q. Did they show up at the house at all on that date?

16 A. I do not recall them showing up.

17 Q. What did you do on that date?

18 A. I took the opportunity to interview the landlords.

19 Q. Were the Cambodian National Police present when you
20 interviewed the landlords?

21 A. I don't recall the police being there at that point.

22 Q. Did you return to the defendant's house on the 19th?

23 A. Yes, ma'am, I did.

24 Q. Did the Cambodian National Police return on that day as
25 well?

1 A. Yes, they did.

2 Q. What happened on the 19th?

3 A. Once the defendant Pepe appeared and the prosecutor, and
4 they also brought the defense attorney, Meng Theng Y -- and
5 that's M-E-N-G, separate word T-H-E-N-G, third word the letter
6 Y -- showed up along with the police, and they resumed the
7 warrant.

8 Q. And on that day on the 19th, did you ever observe Pepe's
9 lawyer objecting to the seizure of any evidence?

10 A. I did not observe that.

11 Q. To your knowledge, did Pepe's lawyer ever complain that the
12 search warrant in any respect violated Cambodian law?

13 A. No.

14 Q. Did the search conclude on the 19th?

15 A. Yes, ma'am, it did.

16 Q. Who seized the evidence?

17 A. Cambodian National Police.

18 Q. Did you take any evidence into ICE custody?

19 A. No.

20 Q. Other than you, was anyone else from ICE present at the
21 search either on June 17th or on June 19th?

22 A. From ICE, it was only me.

23 Q. Attache Phillips, during your five years as the ICE attache
24 in Bangkok, have you ever conducted what you considered to be a
25 joint investigation with foreign law enforcement?

1 A. Several times.

2 Q. And can you briefly describe what your role is in what you
3 consider to be a joint investigation.

4 A. Yes. It's taking information and going directly to the
5 police and sharing that information, developing a -- an
6 operational plan, a course of action, conducting surveillance
7 together, analyzing phone tolls together, obtaining phone
8 numbers together.

9 Oftentimes when I run a joint investigation, I'm an
10 undercover agent. I have actively participated in undercover
11 operations on behalf of the Royalty Police and in conjunction
12 with and being covered by Cambodian National Police during
13 undercover operations.

14 MS. DONAHUE: I have no further questions, Your Honor.

15 If the defense is seeking to move the disk, the CD in,
16 the Government would have no objection, provided that the entire
17 portion -- the entire search go in, not just the selected
18 snippets that the defense played for the Court. Otherwise, the
19 Government would go through and play extensive portions of it.
20 But I didn't think it was really necessary at this time.

21 THE COURT: Mr. Gunn?

22 MR. GUNN: Your Honor, I don't object to that. I
23 think technically under the rules of evidence, it's only the
24 parts that are played that come in, but I have no objection, in
25 light of the Court being the Trier of Fact, to just letting the

1 Court receive it. That's fine.

2 THE COURT: For the record, the entire CD will be
3 received.

4 MR. GUNN: For the record I think it's Defense
5 Exhibit 105.

6 (Defendant's Exhibit 105 was received.)

7 MR. GUNN: I have just a couple brief questions.

8 RECROSS-EXAMINATION

9 BY MR. GUNN:

10 Q. Agent Phillips, you testified on what I will call redirect
11 examination about a three-hour search being videotaped spanning
12 two days?

13 A. The search was three hours, yes. I'm guessing.

14 Q. The videotape of the second day is less than 40 minutes;
15 right?

16 A. I don't know. I don't know how long the videotape is.

17 Q. Would it refresh your memory if you saw the end of the
18 videotape and the time counter?

19 THE COURT: No. It would show what the time counter
20 says. It wouldn't refresh his memory.

21 MR. GUNN: All right.

22 Q. You have watched the videotapes; right?

23 A. Yes, sir, that's correct.

24 Q. And isn't it true that the videotapes for June 17th and
25 June 19th fall well short of three hours total?

1 A. Yes, sir.

2 Q. So when you say it was a three-hour videotape search on
3 re-direct examination, that was inaccurate. It's actually
4 something less than that?

5 A. I didn't say it was a three-hour videotape search.

6 Q. You just meant the search was three hours?

7 A. And I'm just guessing, sir.

8 Q. So the entire search wasn't videotaped?

9 A. Well, if the video is less than three hours, the entire
10 search isn't taped, no.

11 Q. You testified about other people who were present during --
12 at one point on your redirect examination you testified about
13 other people who are present at one or both of the searches, and
14 you included the maid and the gate boy and the village chief.

15 A. Yes, sir.

16 Q. That was just on June 17th?

17 A. The maid and the gate boy was on June 17th. And the -- who
18 was the third person, sir?

19 Q. Village chief.

20 A. Village chief, I believe, was there on both days.

21 Q. But you don't remember for sure?

22 A. No, I don't remember for sure.

23 MR. GUNN: I don't believe I have any more questions.
24 If I could just double-check my notes, Your Honor.

25 THE COURT: Yes.

1 MR. GUNN: No further questions, Your Honor.

2 THE COURT: All right. One of the things that I was
3 going to ask for further information on was the Singapore aspect
4 of the motion and the suggestion, I think, that there was no
5 search warrant necessary because that investigation, if I'm
6 understanding the Government's argument correctly, was conducted
7 solely to aid the Cambodian investigation, and I'm not -- I
8 don't know if that's the Government's argument and whether you
9 have additional evidence or authority in that regard.

10 If it's evidence and it would come from Mr. Phillips,
11 we ought to get it today. If it's not, if you have nothing
12 further to add from Mr. Phillips, we can excuse him.

13 MS. DONAHUE: May I have just one moment, Your Honor?

14 THE COURT: Sure.

15 (Counsel confer off the record)

16 REDIRECT EXAMINATION

17 BY MS. DONAHUE:

18 Q. Attache Phillips, turning your attention to the Court's
19 area of inquiry, are you familiar with a letter written on
20 June 20th, 2006, from Andrew Simpson to His Excellency Hok Lundi
21 which states: "Agents request that they have access to the
22 evidence, specifically Mr. Pepe's computer, hard drive, memory
23 stick and USB thumb drive so that they may be sent to the
24 United States for computer forensic testing"?

25 A. Yes, ma'am.

1 Q. And do you know or were you involved in this request?

2 A. On the 20th, yes, ma'am.

3 Q. And can you explain why the request is phrased this way?

4 A. Primarily it's cultural. When we went over to the
5 Cambodian National Police to speak with the primary agent in
6 charge, CNP agent in charge, he had requested us, as they always
7 do, to write a letter requesting exactly what you just read.

8 Q. And why had he -- if you know, why was that request made?

9 A. Because the Cambodian National Police do not have any
10 forensic capabilities within their department to look at images
11 or computer media, electronic media, at the same standard as the
12 United States or most other developed countries. They don't
13 have the equipment.

14 Q. And if the Cambodian National Police were asking for help
15 from the United States then, if you know, why does the letter
16 suggest that the United States is asking for help from the
17 Cambodian National Police?

18 A. That's purely cultural. It's kind of hard to explain, but
19 it's saving face in Asia. If you don't have the ability to do
20 something, they're a little bit embarrassed that they don't have
21 those capabilities, and those are basically kind of standard
22 letters that go out. On other occasions, that's happened as
23 well.

24 MS. DONAHUE: I have no further questions of this
25 witness.

1 THE COURT: Mr. Gunn, would you like to follow up at
2 all?

3 MR. GUNN: Yes.

4 RE CROSS-EXAMINATION

5 BY MR. GUNN:

6 Q. You were conducting your own investigation; correct?

7 A. Separately, yes, sir.

8 Q. And your investigation had commenced; correct?

9 A. No. It's still ongoing.

10 Q. Well, it had commenced by June 20th; correct?

11 A. It was continuous.

12 Q. It had begun before June 20th, though; right?

13 A. Yes.

14 Q. It had begun at least on June 12th, June 14th, somewhere in
15 there where you talked to the NGO; right?

16 A. June 14th.

17 Q. And you were then interviewing witnesses?

18 A. Yes, sir.

19 Q. And you were present at the search?

20 A. Yes, sir.

21 Q. Took lots of photos?

22 A. Yes, sir.

23 Q. Looked through documents to see if there were any documents
24 you might not have photos of?

25 A. Yes, sir.

1 Q. Wanted to make sure that bottle was retrieved?

2 A. Yes, sir.

3 Q. And you had in mind that there was a potential for
4 prosecution in the United States, possibility; right?

5 A. Pursuant -- upon agreement with the U.S. Attorney's office,
6 yes, sir.

7 Q. And so your investigation was to gather evidence for that;
8 correct?

9 A. In my investigation, correct.

10 Q. And you were basically at the very least paralleling what
11 the Cambodians were doing; right?

12 A. Yes, sir.

13 Q. You wanted to develop evidence the same way they wanted to
14 develop evidence?

15 A. Not the same way.

16 Q. They wanted to develop evidence; right?

17 A. Yes.

18 Q. And you wanted to develop evidence?

19 A. That's correct.

20 Q. And you know that computer evidence can be important in
21 these types of cases?

22 A. That's correct.

23 Q. So you knew that a forensic computer evidence developed by
24 an American forensic computer expert would be useful in a
25 potential American prosecution; correct?

1 A. If they required that or requested it, yes, sir.

2 Q. And you know that that kind of evidence often is requested
3 in these types of cases where a person has a computer; right?

4 A. That's correct, sir.

5 Q. In fact, it's almost pretty standard practice that the
6 Government or the prosecutors want the computer analyzed; right?

7 A. In my experience, yes.

8 Q. Almost every case where there is a computer present; right?

9 A. I can't say every case, but, yes, generally.

10 Q. And so this forensic computer examination that was going to
11 take place was going to be valuable to your parallel
12 investigation; correct?

13 A. Potentially.

14 Q. Well, it definitely would be valuable to the investigation;
15 right? Whether or not there was a prosecution was one issue,
16 but you were conducting an investigation; right?

17 A. If there was something on there, yeah, it would.

18 MR. GUNN: No further questions.

19 THE COURT: All right. Thank you.

20 Ms. Donahue?

21 MS. DONAHUE: I have nothing further, Your Honor.

22 THE COURT: All right. Thank you, sir. Thank you
23 very much for coming. You're excused.

24 THE WITNESS: Sir, do you want your exhibits back?

25 THE COURT: Just leave those there.

1 MR. GUNN: They are in evidence. I believe they're all
2 in evidence; isn't that correct?

3 THE COURT: I don't think you offered them.

4 MR. GUNN: Actually three of them are not.

5 THE COURT: Well, I think it's a little late to
6 continue today. Were you planning on having another witness?

7 MS. DONAHUE: Your Honor, the other witness is based
8 in Los Angeles so he can come at the Court's convenience.

9 THE COURT: Why don't the two of you get together and
10 talk to my CRD and find out what a good time is to do that.

11 MR. GUNN: We're actually going to be traveling to
12 Cambodia, leaving on Friday, Your Honor, to conduct some
13 investigation. Would it be -- does the Court feel a need to do
14 it this week as opposed to when we return?

15 THE COURT: I don't have any such need. You can do it
16 when it's convenient for you.

17 MR. GUNN: All right.

18 THE COURT: All right. Thank you.

19 MR. BROWN: Thank you, Your Honor.

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21 (Proceedings concluded at 11:16 A.M.)

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CERTIFICATE

I hereby certify that pursuant to Section 753, Title 18, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Pamela A. Seijas
Pamela A. Seijas CSR No. 3593
Official Reporter

2-26-08
Date

1	<u>I N D E X</u>			
2	WITNESSES FOR THE			
3	GOVERNMENT:	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
4	Gary Phillips		7	28, 44 42, 46
5				
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8				
9	WITNESSES FOR THE			
10	DEFENSE:	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
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16	GOVERNMENT EXHIBITS:		<u>MARKED</u>	<u>RECEIVED</u>
17				
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19				
20	DEFENSE EXHIBITS:		<u>MARKED</u>	<u>RECEIVED</u>
21	101 through 103		7	
22	104		14	
23	105		15	42
24	106 through 110		18	
25				

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UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,	)	CR No. CR 07-168-DSF
13 Plaintiff,	)	<u>DECLARATION OF DAVID NGUYEN-</u>
14 v.	)	<u>GALANTE</u>
15 MICHAEL JOSEPH PEPE,	)	Hearing: December 3, 2007
16 Defendant.	)	Time: 10:00 a.m.
	)	Place: Courtroom of the
	)	Honorable Dale S. Fischer


18 Plaintiff United States of America, by and through its counsel of record, hereby submits
19 the Declaration of United States Department of Immigration and Customs Enforcement Special
20 Agent David Nguyen-Galante in connection with its opposition to (1) the Motion to Suppress
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1 Evidence (Docket No. 21), and (2) the Motion to Suppress Evidence Discovered as a Result of
2 Computer Search Warrant (Docket No. 33), filed by defendant Michael Joseph Pepe.

3 Dated: November 27, 2007 Respectfully submitted,

4 THOMAS P. O'BRIEN
United States Attorney

5 CHRISTINE C. EWELL
6 Assistant United States Attorney
Chief, Criminal Division

7
8 
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11 Attorneys for Plaintiff
United States of America
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DECLARATION OF DAVID NGUYEN-GALANTE

I, David Nguyen-Galante, hereby declare:

1. I have been employed as a special agent with the Immigration and Customs Enforcement (ICE) Department of Homeland Security (DHS) since 2003. Prior to 2003, I was employed as a special agent with the United States Customs Service (USCS) Department of Treasury for eight years. I was also employed with the USCS as an Import Specialist and Customs Inspector approximately for three years from 1992 to 1995. I received and successfully completed the Computer Investigative Specialist training curriculum in computer evidence recovery in May 2000. The Computer Investigative Specialist training was provided by the Department of the Treasury at the Federal Law Enforcement Training Center, Glynco, Georgia.

2. This declaration is made in support of the government's consolidated opposition to Defendant's Motions (1) To Suppress Evidence and (2) To Suppress Evidence Discovered As A Result of Computer Search Warrant.

3. I am currently assigned to the Office of the ICE Attaché in Singapore.

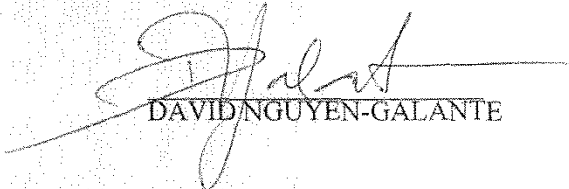
4. On June 30, 2006, the ICE Attaché Singapore received a collateral request from Assistant ICE Attaché (AIA) Gary Phillips, ICE Attaché Bangkok, Thailand, to conduct forensic analysis of a computer hard disk drive, a USB JetFlash thumb drive, and a digital media card that were sized from defendant Pepe's premises in Phnom Penh, Cambodia, pursuant to a search warrant. On or about June 30, 2006, I spoke with AIA Phillips, and he told me that the Cambodian National Police (CNP) requested assistance in making a mirror image of and forensically analyzing media that had been seized from Pepe on or about June 17, 2006. AIA Phillips told me that the CNP had obtained a valid search warrant and that this computer evidence was seized pursuant to Cambodian law.

5. On June 30, 2006, I made a bit image copy of the above-mentioned seized items.

To my knowledge, the search warrant obtained by the CNP for Pepe's residence, pursuant to which I forensically analyzed the aforementioned computer media, complied with Cambodian law.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 27th day of November, 2007, at 13:10, Singapore.


DAVID NGUYEN-GALANTE

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE DALE S. FISCHER, JUDGE PRESIDING

United States of America,)

Plaintiff,)

)

vs.)

Case No. CR 07-168-DSF

)

Michael Joseph Pepe,)

Defendant.)

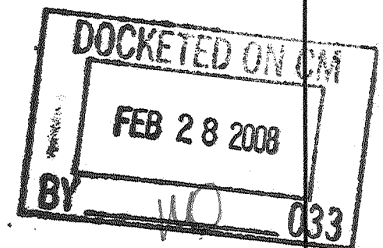
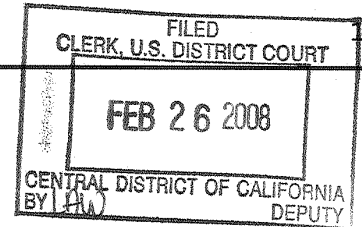
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, December 3, 2007

Pamela A. Seijas, CSR, FCRR
Official Reporter
Roybal Federal Building
255 East Temple Street
Room 181-I
Los Angeles, California 90012
(213) 687-0446



ORIGINAL

134

1 APPEARANCES:

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BY: PATRICIA DONAHUE

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OFFICE OF THE FEDERAL PUBLIC DEFENDER

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BY: CARL GUNN

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DEPUTY FEDERAL PUBLIC DEFENDER

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1 Los Angeles, California, Monday, December 3, 2007

2 10:35 a.m.

3 -oOo-

4 THE CLERK: Calling Item No. 7, CR 07-168-DSF, *United*
5 *States of America vs. Michael Joseph Pepe.* Counsel.

6 MS. DONAHUE: Good morning, Your Honor. Patricia
7 Donahue and John Lulejian on behalf of the United States.

8 THE COURT: Good morning.

9 MR. BROWN: Good morning, Your Honor. Charles Brown
10 and Carl Gunn on behalf of Michael Pepe, who is present,
11 Your Honor. Your Honor, may Mr. Pepe's handcuffs be unlocked
12 for the purposes of this hearing?

13 THE COURT: Sure.

14 MR. BROWN: Thank you.

15 (Whereupon, the Marshal removed the defendant's handcuffs.)

16 THE COURT: The calendar indicates we are here for the
17 motion to dismiss, but we also actually were sort of in the
18 middle of a motion to suppress. How did counsel want to proceed
19 today?

20 MR. BROWN: We would defer to the Court as to how the
21 Court wishes to proceed.

22 THE COURT: Do we have witnesses?

23 MS. DONAHUE: Your Honor, the Government submitted the
24 declaration of Special Agent David Nguyen-Galante. He is
25 present in court, should defense counsel wish to cross-examine

1 him. And due to an unanticipated family emergency, as it turns
2 out, Attache Phillips is back in the United States, and so we
3 had him come to court today, too, should the Court have any
4 questions for him.

5 THE COURT: Because he had so much fun the last time,
6 he is going to join us again?

7 MS. DONAHUE: Exactly right, Your Honor. And Special
8 Agent Eddy Wang, whose declaration the Government submitted in
9 connection with both motions, is also present in court.

10 THE COURT: All right.

11 MS. DONAHUE: The Government is happy to proceed with
12 either motion.

13 THE COURT: Why don't we finish up and maybe the
14 witnesses can go?

15 MR. GUNN: That's fine, Your Honor. I think that's my
16 motion. I can -- I did want to renew my motion to exclude
17 witnesses and can start with Agent Galante.

18 THE COURT: All right.

19 MS. DONAHUE: We will have Special Agent Galante come
20 forward, and then we will have Agent Phillips and Special Agent
21 Wang leave the courtroom.

22 David Nguyen-Galante, Plaintiff's witness, was sworn

23 THE CLERK: Please have a seat. Please state your
24 full name and spell your full name for the record.

25 THE WITNESS: My name is David Nguyen-Galante.

1 N-G-U-Y-E-N hyphenated G-A-L-A-N-T-E.

2 THE COURT: You may proceed.

3 MR. GUNN: Thank you, Your Honor. If I could have an
4 exhibit marked -- it's actually a copy of Exhibit H from the
5 motion. I don't know if the Court wants me to re-mark it as 112
6 or refer to it as H. I could approach so that we can --

7 THE COURT: Let's refer to it as H.

8 MR. GUNN: That's fine, Your Honor. If I could
9 approach the clerk -- maybe I can inquire as to whether the
10 witness has a copy. Do you have a copy of a report you wrote in
11 this case with a Report No. 001 and -- I'm not sure you have a
12 date on it, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. GUNN:

15 Q. Do you have a copy of the report you wrote in this matter?

16 A. Yes. It's dated November 16, '06, top left corner, first
17 page.

18 MR. GUNN: Could I approach, Your Honor, because I
19 don't see that date on the copy of the report I'm referring to.

20 THE COURT: I don't see it either.

21 BY MR. GUNN:

22 Q. Is this a copy of the report you're referring to,
23 Agent Galante?

24 A. Yes. That is the second page. This is the first page of
25 the report. That is really the second page.

1 Q. I didn't --

2 A. It is the same information. It's repeated.

3 MR. GUNN: All right. I -- Your Honor, may I look at
4 his copy? It's Jencks material that I don't know if I received.
5 So if I could look at the first --

6 THE WITNESS: Sure. It's the same information.

7 THE COURT: You don't answer questions when he is
8 asking me.

9 Ms. Donahue, do you want to know what is going on? Do
10 you want to look at it before Mr. Gunn takes a look at it?

11 MS. DONAHUE: It's a one-page summary of the case that
12 is slapped on top of every report. Mr. Gunn has seen it many
13 times and is certainly welcome to look at it again.

14 THE COURT: Okay. He is just not connecting it up
15 with this document.

16 MR. GUNN: If I could look at it?

17 THE COURT: Go right ahead.

18 MR. GUNN: Thank you. Thank you, Your Honor.

19 Q. Agent Galante, the report that I have given you, which we
20 will refer to as Exhibit H, is actually a little bit different
21 than the report you have, correct, at least in terms of page
22 numbering? Maybe I can be more specific. The report I have
23 given you as Exhibit H begins with the first page as page 1;
24 correct?

25 A. Correct.

1 Q. The report you are referring to that you were saying is the
2 same report begins with the Page No. -- the same page that is
3 numbered 1 in Exhibit 8 is Page 3 in your report; correct?

4 A. Correct.

5 Q. So the report I have given you that is marked as Exhibit H
6 was actually separately prepared at a different time; correct?

7 A. No. It's the same report.

8 Q. Right. But it's -- it has the same text; correct?

9 A. Yes.

10 Q. But it's a different piece of paper; right?

11 A. I -- yes.

12 Q. It's, in fact -- it's not even an identical copy of the
13 same piece of paper because it has a different page number in
14 the upper right-hand corner; correct?

15 A. It is the same -- it's -- depending on the printer, which
16 printer it printed out from, it gives you the same --
17 information is the same. The format might look different, but
18 the content is the same.

19 Q. But it was printed at a different time, and that's why it
20 has a different page number; correct?

21 A. Correct.

22 Q. It was printed at the time that you did the forensic
23 examination; correct? Exhibit H, I'm referring to, the document
24 I have given you.

25 A. Well, our report can be printed from any government ICE

1 computer.

2 Q. Okay. The report that I have given you, Exhibit H, that
3 has a Page 1 that begins with the words "Details of
4 investigation on June 30, 2006", that document?

5 A. Yes.

6 Q. That was a report you prepared at the time of the forensic
7 examination; correct?

8 A. Yes.

9 Q. You didn't prepare it on the November 16th date that is on
10 the cover sheet of the other report you're referring to;
11 correct?

12 A. It's the same report.

13 Q. But it was prepared at the time of the forensic
14 examination; correct?

15 A. No. The report was prepared after the examination.

16 Q. But within a day or two after; correct?

17 A. I am not clear.

18 Q. The examination was on -- sometime in late June or early
19 July; correct?

20 A. Yes, sir.

21 Q. And after the examination, very soon after, you prepared a
22 report; correct?

23 THE COURT: Mr. Gunn, I'm not sure I'm looking at the
24 same document because the third paragraph says, "On September
25 19, 2006," so presumably it was prepared after September 19.

1 MR. GUNN: All right, Your Honor. All right.

2 Q. This document has a case number; correct?

3 A. Yes, sir.

4 Q. And that case number is SX07QR06BK0008; correct?

5 A. Yes, sir.

6 Q. And where did you get that case number?

7 A. The case number is generated by our office.

8 Q. And that's a standard case number for this case; correct?

9 A. It's standard but for my office.

10 Q. For your office?

11 A. In Singapore office.

12 Q. The "S" stands for Singapore; correct?

13 A. "SX" stands for Singapore.

14 Q. And the rest of the numbers is a standard number for the

15 case, wherever the reports may be generated; correct?

16 A. Yes, sir.

17 Q. So if a report was generated in Bangkok, it would be "BK"

18 and then all the same letters and numbers; right?

19 A. Right. The first two letters are representing the office

20 where the report originated from.

21 Q. And then the rest of the numbers and letters are for the

22 case, wherever the report may be generated; correct?

23 A. Yes.

24 Q. So on the report it has everything the same, except for the

25 SX -- is all part of the same case; correct?

1 A. Yes, sir.

2 MR. GUNN: No questions, Your Honor -- no further
3 questions.

4 THE COURT: Thank you. Ms. Donahue?

5 MS. DONAHUE: I have no questions, Your Honor.

6 THE COURT: All right. I guess you can step down
7 then. Thank you.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: Who would you like to speak to next,
10 Mr. Gunn?

11 MR. GUNN: Agent Wang, Your Honor.

12 Eddy Wang, Defendant's witness, was sworn

13 THE CLERK: Thank you. Please be seated.

14 Please state your full name and spell your name for
15 the record.

16 THE WITNESS: Eddy, E-D-D-Y. Last name is Wang,
17 W-A-N-G.

18 THE COURT: You may proceed.

19 MR. GUNN: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. GUNN:

22 Q. My first questions were going to be regarding three
23 exhibits that were marked for identification at the last
24 hearing. I brought extra copies of those which I can give to
25 the witness. They are 101, 102 and 103. Should I just --

1 THE COURT: Please.

2 MR. GUNN: Thank you. If I could just handwrite the
3 numbers for now, Your Honor?

4 THE COURT: Fine.

5 BY MR. GUNN:

6 Q. Would you first look at Defense Exhibit 101, Agent Wang.

7 A. Okay.

8 Q. Now, among the items that were taken from -- you received
9 voluminous materials that were taken from Mr. Pepe's house;
10 correct?

11 A. Yes.

12 Q. Those were provided to you as part of the investigation of
13 this case for you to provide to the Government to provide in
14 discovery; correct?

15 A. Yes, sir.

16 Q. And among the items that were taken from the house that you
17 received were a number of issues of the *Cambodian Daily*
18 newspaper; correct?

19 A. That's correct, sir.

20 Q. That is an English language paper they publish in Cambodia;
21 correct?

22 A. I believe it's both language, but yes, English is part of
23 it, correct.

24 Q. There is an English language version?

25 A. Correct, sir.

1 Q. And Defense Exhibit 101 is a copy of one of the issues that
2 was found in Mr. Pepe's house; correct?

3 A. That's correct.

4 MR. GUNN: Your Honor, I would offer Defense
5 Exhibit 101 into evidence.

6 MS. DONAHUE: No objection.

7 THE COURT: All right. Thank you. That will come in.
8 (Defendant's Exhibit 101 was received.)

9 BY MR. GUNN:

10 Q. Would you now look at Defense Exhibit 102. That's a
11 translation of an attachment prepared by the Cambodian
12 prosecutor listing some of the evidence in this case; correct?

13 A. That's correct, sir.

14 MR. GUNN: Your Honor, I would offer Defense
15 Exhibit 102 into evidence.

16 MR. LULEJIAN: No objection, Your Honor.

17 THE COURT: Thank you. That will come in.
18 (Defendant's Exhibit 102 was received.)

19 BY MR. GUNN:

20 Q. Would you now look at Defense Exhibit 103. That's a
21 translation of a document prepared by the Cambodian police
22 listing some of the evidence in this case; correct?

23 A. That's correct.

24 MR. GUNN: Your Honor, I would offer Defense
25 Exhibit 103 into evidence.

1 MR. LULEJIAN: No objection.

2 THE COURT: That will come in. Thank you.

3 (Defendant's Exhibit 103 was received.)

4 BY MR. GUNN:

5 Q. Now, you -- is it correct that you conducted an initial --
6 well, let me step back.

7 You were the one who applied for a search warrant in
8 this case of a computer and a number of CD's, computer CD's;
9 correct?

10 A. That's correct, sir.

11 Q. And is it correct that you conducted -- you personally --
12 an initial review of the various CD's that were listed in that
13 search warrant after you got the warrant?

14 A. I, along with a digital forensics agent.

15 Q. The two of you together?

16 A. Correct.

17 Q. All right. And so you did an -- there were about 30 or 31
18 CD's; correct?

19 A. Approximately that number.

20 Q. And so it was you and this forensics agent that looked at
21 those initially; is that right?

22 A. That's correct, sir.

23 Q. And how did you do that?

24 A. That was done with assistance from the digital forensic
25 agent. He used software and his techniques in which to view

1 those documents and/or images.

2 Q. All right. So it was -- the first thing you did was put
3 the CD in the computer? What exactly did you do?

4 A. I believe we made sure that the viewing instrument, whether
5 it be the computer or not, couldn't be written to or did not
6 have writing software. And then afterwards, we then viewed the
7 CD's.

8 Q. And how did you go about viewing the CD's?

9 A. The digital forensics agent used software which brought up
10 images within the CD.

11 Q. And did you -- well, let me start -- first of all, did you
12 look at the CD's one-by-one? First you looked at one CD and
13 then the second CD and so on?

14 A. That's correct, sir.

15 Q. So when you looked at a particular CD, what was the first
16 step as far as what was done when you looked at that CD?

17 A. Well --

18 Q. Or the copy of it, as the case may be?

19 A. I'm sorry. Can you repeat the question?

20 Q. What was the first thing that was done when you looked at
21 the files on a particular CD?

22 A. We viewed the images.

23 Q. And how did you select -- did you view every file on the
24 CD?

25 A. We viewed every viewable file at that point on the CD.

1 Q. And when you say every viewable file, would you explain
2 what you mean by that?

3 A. Whatever the software which the digital forensics agent
4 used, whatever software that was, it pulled up a certain number
5 of images, and we viewed those images.

6 Q. And did you look at just image files or also non-imaged
7 files?

8 A. We looked at both.

9 Q. So you looked at some non-imaged files?

10 A. That's correct.

11 Q. What sort of non-imaged files did you look at?

12 A. There were letters typed. I believe there was -- and this
13 would be on the -- if I recall correctly, on the
14 three-and-a-half floppy disk, there was some writing. There was
15 some written material on those disks.

16 Q. And how did you select what written material to look at?

17 A. We viewed -- we viewed all the written material.

18 Q. And was that true -- did you look for written material on
19 all of the CD's?

20 A. I believe we looked for all data on the CD's.

21 Q. Meaning all computer files?

22 A. Correct.

23 Q. And you looked at every computer file?

24 A. I believe we did.

25 Q. And you did that for each CD one-by-one?

1 A. Correct.

2 Q. Now, I would like you to go to your affidavit, the
3 affidavit you did for the search warrant. In Paragraph 16-D of
4 your affidavit, you talk -- are you getting a copy of your
5 affidavit in front of you?

6 A. Yes, sir.

7 Q. I would like you not to look at it unless you need to to
8 refresh your memory.

9 A. I apologize.

10 Q. Maybe you can have it available in case you need it. In
11 Paragraph 16-D of your affidavit or in one of the paragraphs of
12 your affidavit, you talk about a place in a letter Mr. Pepe
13 wrote where he talked about having taken pictures of two of
14 Basang's nieces unclothed; correct?

15 A. That's correct, sir.

16 Q. He never said in his letters that those nieces were under
17 18, did he?

18 A. No, sir.

19 Q. You also talk in your affidavit about Mr. Pepe saying in
20 that letter that he had tied up one of the known victims and
21 slapped her in the face; correct?

22 A. That's correct, sir.

23 Q. That was a girl named S [REDACTED]?

24 A. That's correct, sir.

25 Q. He said elsewhere in the letter that he thought that girl

1 was 14 to 19 years old; correct?

2 A. I believe so.

3 Q. Not that he knew she was under 18?

4 A. I -- I don't understand the question.

5 Q. He didn't say anywhere in the letter that he knew she was
6 under 18; correct?

7 A. No, he did not say --

8 Q. In fact, what he said was he thought she was 14 to 19 years
9 old; correct?

10 A. That's correct.

11 Q. He also talked in the letter about how he had a great deal
12 of trouble determining the age of people in Cambodia, didn't he?

13 A. That's correct, sir.

14 Q. You didn't put any of those qualifications in your
15 affidavit, did you?

16 A. Did not.

17 MR. GUNN: No further questions, Your Honor.

18 THE COURT: Mr. Lulejian?

19 MR. LULEJIAN: Yes, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. LULEJIAN:

22 Q. Special Agent Wang, why did you look at all the files?

23 A. We looked at all the files because we were searching for
24 evidence for a -- violations of the -- of the criminal statutes
25 for which we were seeking the search warrant.

1 Q. And what were those statutes?

2 A. Title 18 United States Code Section 2260, production of
3 child pornography for importation; and Title 18 United States
4 Code 2423(c), engaging in illicit sexual conduct in foreign
5 places.

6 Q. Special Agent, based on your experience, do pedophiles --
7 do individuals often try to disguise files by using different
8 names?

9 A. They do.

10 MR. GUNN: Objection. Leading, Your Honor. No
11 foundation.

12 THE COURT: Overruled.

13 MR. LULEJIAN: You can answer the question.

14 THE WITNESS: I'm sorry. They do.

15 BY MR. LULEJIAN:

16 Q. And when you were reviewing those files, were you aware of
17 that background?

18 A. I was.

19 Q. Special Agent, a few moments ago Mr. Gunn asked you about a
20 letter. Do you recall reading that letter?

21 A. I do.

22 Q. And in that letter, I believe Mr. Gunn said that Mr. Pepe
23 wrote the individual who he tied up and beat was between 14 and
24 19 years old. Is that accurate?

25 A. I believe it is.

1 Q. Based on that letter, what would you be looking for in
2 those documents -- I am sorry. What would you be looking for in
3 the files?

4 A. In the files?

5 Q. Yes, sir.

6 A. I would be looking for possible written materials as far as
7 diaries, fantasy writings, anything in which he might have
8 documented his -- his own activities, as well as any possible
9 visual depictions of what occurred, what he stated in the
10 letter.

11 Q. If it was possible that the woman or the girl was over 18,
12 why would you still look for those?

13 A. For identification purposes. We -- we would have to verify
14 the identity of the victim once we identified -- we would have
15 to have the picture to verify the identity of the victim.

16 Q. Is there anything else you would have to identify?

17 A. Any other victims that may possibly -- any -- any other of
18 our known victims.

19 Q. What would identifying the victim do with respect to the
20 charge of travel and foreign -- illicit sexual conduct in
21 foreign places?

22 A. It would further substantiate their -- their allegations
23 against the defendant. It would also allow us an opportunity to
24 verify their ages to determine whether or not they were minors.

25 Q. So one of the things you are looking for then is to find

1 out whether or not she was a minor?

2 A. Absolutely.

3 MR. LULEJIAN: One moment, please, Your Honor.

4 No further questions, Your Honor. Thank you.

5 THE COURT: Thank you. Mr. Gunn?

6 MR. GUNN: Nothing further, Your Honor.

7 THE COURT: Thank you, sir. You can step down.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: Mr. Gunn, did you have any further inquiry
10 you wished to make of Mr. Phillips as long as he is here?

11 MR. GUNN: No, Your Honor.

12 THE COURT: Anything further from the Government?

13 MS. DONAHUE: No, Your Honor.

14 THE COURT: All right. Anything further you wanted to
15 do by way of presenting evidence, Mr. Gunn?

16 MR. GUNN: No, Your Honor.

17 THE COURT: All right. You may have your witnesses
18 return, I suppose, or leave, whichever is more convenient for
19 them.

20 MR. GUNN: Your Honor, I wonder if we can keep the
21 witnesses excluded during argument just in case some
22 reconsideration or renewal of the motion comes out at some
23 point?

24 THE COURT: All right. That's fine. If anybody is
25 interested in hearing the motion to dismiss the Indictment, we

1 can do that. And then I am going to continue to exclude the
2 witnesses for any discussion on the motion to suppress.

3 MS. DONAHUE: Is Your Honor going to hear argument now
4 on the dismissal motion then?

5 THE COURT: Yes.

6 MS. DONAHUE: So the witnesses can stay for that.

7 THE COURT: Yes. That's why I rearranged things.

8 MS. DONAHUE: Thank you, Your Honor.

9 THE COURT: All right. Mr. Gunn or Mr. Brown, I am --
10 it's a very interesting statute. I am not inclined to dismiss
11 the Indictment so I will hear from counsel.

12 MR. BROWN: Thank you very much, Your Honor.

13 Your Honor, from the defense standpoint, we seek two
14 important issues with respect to the statute. I think the first
15 question is the question raised by the *Clark* decision that was
16 unaddressed in *Jackson* and that has to do with whether the lapse
17 in time in this case, eight months, between travel and act
18 renders jurisdiction proper. And it's our argument that that's
19 not a rational exercise of foreign commerce power and that there
20 is no tenable nexus to foreign commerce and can we think that
21 for that reason, the statute is unconstitutional as applied to
22 Mr. Pepe.

23 The second really important argument that we are
24 making is in terms of the statutory interpretation, does the
25 statute implicitly contain some temporal limit, and that has to

1 do with how the word "and" is interpreted in the statute. And I
2 can address both of those arguments, if the Court would like.

3 THE COURT: Well, I am interested in knowing whether
4 your argument is that as a matter of law, there is a specific
5 time frame that would -- in any as applied challenge, that would
6 be, you know, if you're one side of it, you're fine, and if
7 you're on the other side of it, you're not. Or are you
8 suggesting that courts have to look on a case-by-case basis,
9 which is generally how you look at as applied, but this concept
10 of time doesn't seem to work quite in the usual way in that
11 context.

12 MR. BROWN: Certainly, Your Honor. I think that is
13 really the challenge with respect to the statute. There really
14 is a line-drawing problem here, and the question really becomes
15 where does the Court draw the line. When does the time frame
16 become so attenuated that jurisdiction is no longer proper.

17 The *Clark* decision, I think it would be a case-by-case
18 analysis, Your Honor, and I think looking at the facts in *Clark*,
19 you have a two-month time gap, and the Court in *Clark* said that
20 was soon after his travel or his, I guess, dipping his toe in
21 the stream of foreign commerce.

22 The Court said there that two months was soon enough.
23 I think the language of *Clark*, "soon enough after travel," kind
24 of gives some clue as to perhaps what would be an appropriate
25 time frame. And I think I guess the starting point of the

1 baseline would be two months.

2 And it's our argument that "soon after" I guess --
3 "soon after" is two to perhaps maybe three months, Your Honor,
4 but in a case like this where eight months have gone by, it's
5 not clear how -- how there can be any finding that there is a
6 tenable nexus to commerce.

7 If there was a plane flight, eight months have gone
8 by. There is certainly no impact on foreign commerce at that
9 point. Any -- any impact on commerce has been attenuated by
10 that lapse of time.

11 THE COURT: And is that then, where there are disputed
12 issues of fact, a matter for the Court to decide as a matter of
13 law since it's jurisdiction? Or is that something that the jury
14 considers in some manner?

15 MR. BROWN: I think that that's a very good question,
16 Your Honor, and that's one of the issues we addressed in our
17 reply. If there are disputed facts, our position would be that
18 they are questions for the jury to decide.

19 But in this case, although the Government has
20 attempted to argue that the time frame is shorter by referencing
21 photographs and other statements attributed to the alleged
22 victims, there really -- there really does not appear to be a
23 factual dispute. If the Court looks at the Government's
24 exhibits, it's clear that according to the statements of the
25 girls, the incidents occurred in the spring, March. If the

1 Court deduces the statements back from the time of the arrest,
2 that puts us in that eight-month category. It certainly puts us
3 beyond a rational time frame for which jurisdiction can be found
4 in terms of connections to foreign commerce, Your Honor.

5 THE COURT: All right. Thank you. And your second
6 point?

7 MR. BROWN: Your Honor, in terms of the statutory
8 interpretation argument, I think that that's really an important
9 issue. The Government interpreted our argument as attempting to
10 rewrite the statute, and it's our position that is certainly not
11 clear -- not true. I think it's --

12 THE COURT: But you would if you could.

13 MR. BROWN: Well, I think it's an important question
14 in terms of how -- what the statute means in terms of whether
15 there is a temporal nexus. It's clear that from the
16 Congressional record, the purpose of the statute was geared to
17 prohibiting or targeting sex tourism. And the language of the
18 Congressional records indicates that the purpose in enacting the
19 statute and getting rid of the intent requirement was to make
20 the Government's burden easier in terms of proving cases against
21 potential sex tourists.

22 But it's -- the statute in no way indicates that it's
23 intended to broaden the scope to target people who were already
24 residing in a foreign country and had demonstrated a no intent
25 to return. So it's clear from the record that there was no

1 intent on the part of Congress to broaden the reach or the scope
2 of 2423. So I think the rules and the canons of statutory
3 interpretation really favor the defense argument in this case.

4 And as the Court is aware, avoiding constitutional
5 doubt, ambiguity favors lenity, the starting point is the
6 language of the statute itself and the words construed according
7 to their ordinary meaning. I think all of those canons really
8 support our argument that the statute in its -- in its plain
9 language contains an implicit temporal limit because had
10 Congress intended to broaden the reach of the statute or had --
11 have the statute reach out to people 20 years later, it -- it
12 could have and should have used the language people who travel,
13 quote, and at any time thereafter engage in this type of alleged
14 conduct. But that language is not in the statute, and I think
15 the case law is pretty clear that Congress knows how to write a
16 statute that it wants to write, and they did not write that kind
17 of statute. They just said travel and engage in some specific
18 act. And according to the dictionary, clearly indicates some --
19 some temporal limit.

20 For example, Your Honor, I went to Starbuck's this
21 morning and had a Chai tea latte. Implicit in there -- I mean,
22 it seems overly simplistic, but I think -- and we take it for
23 granted that that's what "and" means. But if you look at it in
24 that sense, Your Honor, I think it raises an important question.

25 I went to court and made an argument this morning. In

1 any common sense conversation when you use the word "and,"
2 you're -- you're limiting the scope of the time -- the time
3 frame at issue.

4 And in this case, the Congressional -- the language of
5 the statute says "Travel and engage in illicit conduct."
6 Clearly, that is targeting people who are, quote, unquote,
7 traveling with the intent to engage in sexual tourism, but the
8 Congress was simply eliminating that -- that -- the --
9 eliminating the Government's burden of having to prove that
10 person traveled with the intent to engage in -- did not expand
11 into infinity the type of situations or the factual scenarios
12 that can be prosecuted. I think that any other reading of the
13 statute would result in really absurd prosecution, Your Honor.

14 And certainly not -- would not -- perhaps there is
15 some important governmental interest in these types of
16 prosecutions, but I think that there are limits, and I think
17 this case clearly falls outside the limit of what is reasonable
18 and rational, Your Honor, and we would submit on that.

19 THE COURT: We all know there are limits on
20 Congress's, power but in this particular circumstance, I am
21 relatively confident that Congress meant to cover as much
22 conduct as it possibly could constitutionally cover, and I don't
23 think it meant to limit the scope of the statute by using that
24 term. But you did make an excellent argument on your client's
25 behalf.

1 Is there anything the Government would like to add?

2 MR. LULEJIAN: Your Honor, unless you have any
3 questions, no.

4 THE COURT: I don't. Thank you.

5 I am going to deny the motion to dismiss the
6 Indictment. I would like to hear argument on the motion to
7 suppress, but for that we will ask the witnesses to leave. So
8 you can wait in the hall, if you like, for counsel or you can
9 head off.

10 Mr. Gunn, make whatever arguments you think are
11 appropriate, but I am especially interested in -- and mostly the
12 Government would probably want to address this -- I am
13 especially -- I haven't yet firmly decided what I am going to do
14 with the Singapore aspect of this. So as I said, address
15 whichever points that you'd like.

16 MR. GUNN: That is actually what I wanted to start off
17 addressing, Your Honor, because I think -- defense attorneys
18 think all their arguments are strong, but I think that is the
19 strongest one here. I really, do, Your Honor. Let me address
20 it in a couple different ways.

21 First of all, I think it's important that the
22 additional exhibits I just put in through Eddy Wang -- and the
23 reason I put them in is they clearly establish that the
24 Cambodian authorities can get evidence off computers and, in
25 fact, in this case did before there was any forensic

1 examination.

2 The newspaper article, if you read it, talks about
3 them finding hundreds of child pornography images on the
4 computer in another case.

5 The two attachments, Defense Exhibits 102 and 103, are
6 dated before there was any forensic examination in this case, I
7 think like June 19th, and they refer to attached exhibits or
8 attachments that include computer photographs.

9 Now, the agents have testified that there was this
10 Cambodian request for assistance. There is three different
11 reasons that doesn't save the Government. First, I think it's
12 factually questionable. There is absolutely no documentation
13 consistent with the computer search being done to assist the
14 Cambodians or even that being the main purpose.

15 The language of the quest for the computer media in
16 the letter that I attached to my motion suggests the opposite,
17 that you have no letter or notes or anything about a request by
18 the Cambodians. You have no evidence of any report back to the
19 Cambodians. The only report that exists is a standard ICE
20 report form with this ICE case number on it. If you compare the
21 case number on Exhibit H, Your Honor, to the case number on, I
22 believe, Exhibits A and B -- it's either B or C -- it's the
23 exact same case number except for those first two letters at the
24 beginning that signify it came from Bangkok in one case. In the
25 other case, it's an "O" and I didn't ask what "O" meant, but it

1 obviously means some other location. So that's the first reason
2 that this argument that is a request for Cambodian assistance
3 doesn't save the Government.

4 The second reason is, Your Honor, even if there was a
5 Cambodian request, there was certainly an equal or greater
6 American interest in the evidence from the computer. Whether we
7 call it a parallel investigation or a joint investigation or
8 whatever we are going to call it, we know from Agent Phillips'
9 declaration that he was considering the possibility of an
10 American prosecution and he was conducting his own
11 investigation. He admitted on cross-examination that he knew
12 the computer evidence would be valuable to American
13 investigation -- to the American investigation, and he admitted
14 that it's basically a standard practice, a standard
15 investigative technique.

16 And, again, the report we have is a standard ICE
17 report form with this case's official ICE case number on it.
18 There is no way to argue that that's not part of the American
19 investigation, regardless of whether it was maybe also for the
20 Cambodians.

21 And third, Your Honor, it doesn't matter who the
22 search was done for or why it was done because it was still an
23 intrusion into an American citizen's privacy by the American
24 government. You know, I think we sometimes -- in criminal cases
25 we get caught up in the exclusionary rule and it's all about

1 suppressing evidence, and we start thinking, well, the Fourth
2 Amendment means they can't use illegally-obtained evidence
3 against our clients in court. But Your Honor has to remember
4 that's not what the Fourth Amendment means. That's just an
5 enforcement mechanism.

6 What the Fourth Amendment means is that the American
7 government can't invade an American citizen's privacy without a
8 warrant and probable cause, with some exceptions, of course, you
9 know for the warrant requirement when there is a search incident
10 to arrest. That is what the Fourth Amendment is about. And it
11 doesn't matter to whether there is a violation of the Fourth
12 Amendment. It doesn't matter what the Government is doing it
13 for or what they are going to use what they find.

14 If they search my house to get attorney-client records
15 about Mr. Pepe to use against him, that doesn't mean they didn't
16 violate my Fourth Amendment rights. If they search my computer
17 just because they want to know what sort of emails I'm sending
18 out to the world, just because they want to build a file on me,
19 that doesn't mean they are not violating my Fourth Amendment
20 rights.

21 If some government official gets rambunctious and
22 decides he just wants to know what sort of things a person is
23 writing in a person's diary and so invades their computer, that
24 doesn't mean they are not violating the Fourth Amendment rights.
25 If there is no criminal prosecution, we have to fall back on

1 other remedies that may not mean a whole lot, like suing
2 somebody or something like that, but it doesn't mean there is
3 not a violation of the Fourth Amendment rights.

4 So when the American government searches an American
5 citizen's property, without a warrant, probable cause, that
6 violates the Fourth Amendment. That's question no. 1. There is
7 a violation of the Fourth Amendment. And then what the
8 exclusionary rule says is you can't use that in a criminal
9 prosecution if there happens to be a criminal prosecution. It
10 doesn't matter whether that is what the Government planned when
11 they did the search.

12 If they come into my house searching for tax records
13 for a civil tax situation and they find drugs and then they
14 prosecute me for drugs but they never planned on that when they
15 did the search, that doesn't mean that they can't -- that there
16 is no Fourth Amendment violation and they can all of a sudden
17 use the evidence in court.

18 So I think that's the real key here, Your Honor, is
19 you got to remember the difference between the Fourth Amendment
20 and the exclusionary rule. The Fourth Amendment is about
21 American government searching American citizen's property and
22 the limits on that, and those limits were violated here, and it
23 really doesn't matter whether they did it for the Cambodians or
24 whether they did it for themselves or whether they did it for
25 both. Frankly, I think the evidence is very strong that at very

1 least they did it for both, but it doesn't save them regardless.
2 You don't really have to address that factual question.

3 I had some other arguments on the other issues. It
4 sounds like the Court had come to some pretty firm conclusions
5 on those maybe already. Maybe --

6 THE COURT: Well, I usually do because the briefing is
7 so good, but that doesn't mean I can't be persuaded otherwise if
8 there is something you want to address.

9 MR. GUNN: Well, I hope and think that at the very
10 least on the joint venture issue, the Court would recognize that
11 this really is -- go into the joint venture exception cases. I
12 mean, you have Agent Phillips being right there, you have
13 Agent Phillips saying in his PowerPoint that it was coordinated
14 with Cambodians.

15 Only one of the cases that you are cited to by the
16 Government involved a situation where the agents were actually
17 present at the search. And there was nowhere near the level of
18 coordination and participation there was here. They were
19 described as having a passive role, in quotes. So I don't
20 think -- I just think given this evidence -- it doesn't matter
21 whether Agent Phillips was in charge or whether he led the team
22 or whether he was just part of the team. If he was part of the
23 team, that's enough, but I think that photo, I displayed that
24 photo where they are all posing together, that was the team.
25 And it was the team of participants. It was the combined force.

1 And those words "participants" and "combined force" comes right
2 out of the Cambodian reports that Agent Phillips admitted, when
3 he was on the stand, was accurate. So I think they don't get
4 around that, Your Honor.

5 On the -- on the fruits issue, I did want to note one
6 point that I think I misspoke on the fruits issue. I don't -- I
7 argued that even as -- I am getting disorganized here. Let
8 me -- on the fruits issue, the point -- the additional point I
9 want to make to the Court, I would submit, just the way I argue
10 in my papers, there is not enough. Because the way there is
11 probable cause in this case is because of everything they found
12 on the computer. There is no explanation of why and how they
13 find something on the computer, otherwise. The only thing they
14 do have is this reference to two naked photographs of Sang's or
15 Basang's nieces that were then deleted. Well, one, it says they
16 were deleted.

17 Two, the point I didn't make in my papers and I
18 overlooked is there is no indication that those nieces were
19 minors. So not only do you have the fact that it's pictures of
20 just two people, you have the fact that they were deleted, and
21 you have the fact that there is no indication at all that that
22 was child pornography.

23 When you sweep out all the evidence discovered from
24 the computer search, I don't think there is any way you can
25 argue it's not a fruit. And then I think Eddy Wang's testimony

1 that we just heard raises an additional concern that was one I
2 wondered about, and the evidence has born out, that there is a
3 problem. He didn't look -- if they had probable cause for
4 anything, it was to look for child pornography images. But
5 that's not what he looked for. He looked at every single file
6 on the computer, including written documents. And the search
7 warrant certainly did not -- even if everything else before it
8 was legal, the search warrant didn't establish probable cause
9 for written documents. And so I think there is an issue there.
10 I don't think you need to get to it if we -- if we prevail on
11 the original computer search issue, I think the later
12 one is a fruit and you don't need to go there, but I wanted to
13 make that note.

14 THE COURT: All right. Thank you.

15 Ms. Donahue?

16 MS. DONAHUE: Thank you, Your Honor.

17 From the Government's perspective, from law
18 enforcement, here is a United States citizen who travels over
19 there and abuses children in Cambodia which essentially is a
20 third-world country. Badly abuses them. One of those children
21 came forward to a non-governmental organization,
22 non-governmental, not affiliated at all with the United States
23 government, and told them what had happened to her. The
24 non-governmental organization reported that conduct to the
25 Cambodian national police, which had jurisdiction, and it

1 conducted its own investigation.

2 When it was determined that the person who was abusing
3 these children was an American citizen, the non-governmental
4 organization also told U.S. law enforcement, ICE, and ICE then,
5 as it is obligated to do, conducted its own investigation. And
6 if you look at Gary Phillips' declaration, before the search
7 warrant he was doing his investigation and the Cambodian
8 National Police were doing theirs. They arrested Pepe for
9 debauchery, for violation of their local laws. Phillips wasn't
10 present at the time of the arrest, didn't encourage or ask them
11 to arrest this U.S. citizen. They got a search warrant pursuant
12 to their own law. He didn't ask them to get a warrant, didn't
13 advise them to get a warrant, didn't tell them to.

14 When they said they had a warrant for the premises
15 occupied by this U.S. citizen, he showed up and, as you saw from
16 the video and as the record demonstrates, he was the only
17 representative of ICE there. There was not a team of U.S. law
18 enforcement present. There was one ICE agent, as well as a
19 substantial number of Cambodian National Police, and Mr. Dunn,
20 who -- Mr. Dunn is from the International Justice Mission.
21 That's the non-governmental -- one of the non-governmental
22 organizations in this case. Mr. Dunn is not a U.S. law
23 enforcement.

24 The defense sort of excerpted the video sort of to try
25 to hone in on areas where Phillips walked over and looked at

1 evidence or picked up something or pointed out something. If
2 you look at the video sort of in its entirety, Cambodian
3 National Police Officers were going all through the defendant's
4 house. Phillips is there. He is watching what they are doing,
5 and because he had interviewed one of the victims and she had
6 said that Pepe tied her up, when the Cambodian National Police
7 found rope in the closet in his bedroom, of course Phillips
8 pointed to it because that, as well as a lot of the other
9 evidence in the house, very strongly corroborated the
10 information that was coming from these victims.

11 But the fact that he is present and pointing at things
12 under the case law does not transform the investigation into a
13 joint investigation. The defense makes much of the
14 correspondence and the letters. ICE is over in a third-world
15 country attempting to obviously work with law enforcement over
16 there. They don't have the authority to run around and conduct
17 their own investigation. So within those parameters, they have
18 to be, as Phillips points out in his declaration, polite, follow
19 protocol. But the presence of one agent under the case law the
20 Government would submit does not turn the search into a joint
21 investigation. And if it was not a joint investigation, then
22 that evidence clearly is admissible.

23 THE COURT: Tell me about the Singapore aspect.

24 MS. DONAHUE: If the Court -- and the -- the computer
25 evidence was seized, seized by the Cambodian National Police

1 pursuant to a valid Cambodian warrant. The search was conducted
2 at the request of the CNP by ICE. The fact that the CNP is able
3 to pull up a disk or print pictures from a disk, which is what
4 happened in this case, in no way suggests that they have the
5 capacity to go in and do a full-fledged forensic examination.
6 So the issue then becomes CNP asks ICE to do it.

7 The computer itself is not located within the
8 United States. There is no magistrate judge sitting -- U.S.
9 magistrate judge sitting in Phnom Penh to whom ICE could go and
10 seek a search warrant the way that obviously it does in the
11 United States.

12 This is evidence that was seized in a foreign country
13 by foreign law enforcement. Foreign law enforcement has asked
14 ICE for assistance because they can't do it themselves.

15 The defense argues that -- at that point -- prior to
16 that, the Government would submit there is absolutely no way
17 this was a joint investigation. From that point forward, the
18 defense argues there is a joint investigation because ICE is
19 acting at the behest of Cambodian law enforcement.

20 And, yes, this is a U.S. citizen. If he has
21 contraband on his computer, of course U.S. law enforcement is
22 going to be interested, particularly with the passage of this
23 statute under the Protect Act.

24 If it was a joint venture, that does not, as the
25 defense suggests, however, automatically render the computer

1 evidence inadmissible. Then you look at was it seized in
2 compliance with local law and -- or -- excuse me, or was there
3 good faith. Did U.S. law enforcement act in the good faith
4 belief that this computer evidence was seized in compliance with
5 foreign law. And if they were in good faith, the evidence that
6 comes from the computer is admissible.

7 Both Phillips -- and Phillips, who was present at the
8 search warrant, and Galante, the forensic examiner, testified
9 that they believed that this computer evidence had been validly
10 seized by the Cambodian authorities pursuant to a validly issued
11 search warrant under Cambodian law. So clearly under the good
12 faith exception, all of that computer evidence is admissible.

13 In addition, we would submit if the Cambodian --
14 Cambodian law on search and seizure is certainly far, far, far
15 from well-developed, but as the Court could see from the video
16 and from the declarations, the warrant was executed at the
17 proper time of day, the defendant was present, there were other
18 witnesses present. It appears to have been in compliance with
19 Cambodian law, and certainly that is what both -- that is what
20 Phillips believed and that is what Galante believed. So the
21 Court is well within the law in admitting all of the computer
22 evidence under the good faith exception.

23 And the Government would submit that the remainder of
24 the physical evidence that was seized was validly seized
25 pursuant to Cambodian law and likewise is admissible.

1 THE COURT: All right.

2 MS. DONAHUE: And, Your Honor, I should also -- I --
3 the defense has mentioned regarding the search warrant that was
4 executed in the United States for the media that was shipped
5 here that had not previously been searched.

6 The probable cause was included -- looked for
7 violations of 18 U.S. Section 2260 and 2423(c). That's a travel
8 statute. Certainly correspondence and written documents are --
9 yes. Correspondence and written documents would certainly be
10 something that the ICE agents would be looking for in
11 determining whether or not there is evidence of a violation of
12 the travel statute. And the items to be seized -- to be
13 seized, excuse me -- in fact, include correspondence pertaining
14 to the possession, receipt, distribution and a reproduction of
15 child pornography, as well as materials pertaining to travel.

16 THE COURT: Thank you.

17 Mr. Gunn?

18 MR. GUNN: Just one quick note on the joint venture
19 thing before I get back to the computer, Your Honor. The
20 exhibits, Exhibit A to Phillips' declaration and Exhibit C to my
21 motion, show there were at least two other Americans there, Suos
22 Vansak from the U.S. Embassy and a Simpson from, I believe, the
23 Diplomatic Security Service at the Embassy.

24 But let me go to a couple quick points on the
25 computer, Your Honor. I think this computer not in the U.S. is

1 a red herring for a couple of reasons. First of all, I don't
2 think that means the American government can intrude upon
3 Americans' privacy interests anyway.

4 Second of all, if they are worried about how to get a
5 warrant for it in Singapore -- and I think they probably could
6 have gone to an L.A. magistrate and gotten it anyway -- but they
7 could have sent it to L.A. In fact, if you read the letter
8 requesting it, they originally say to send to the United States.
9 I don't think they get around the Fourth Amendment by just
10 choosing to send it to Singapore instead of Los Angeles or
11 wherever else in the United States they might send it.

12 This joint venture -- we are out of the joint venture
13 land now. We are talking about a search by American agents
14 alone at an American facility for, at the very least, a parallel
15 American investigation. We can go back and forth about how much
16 of it was American and how much of it was Cambodian, etc., etc.,
17 but Agent Phillips testified that there was an American
18 investigation going on. It was a search by an American
19 representative, an American agent at an American facility. And
20 it's an American facility the Government chose. If they are
21 worried about getting a warrant there, they could have sent it
22 to somewhere else. So I would submit that they've not saved,
23 Your Honor.

24 THE COURT: Okay. Thank you. Mr. Gunn, Mr. Brown, I
25 would like to speak to you ex parte for a moment with the

1 reporter.

2 (Sidebar conference commenced without the Government.)
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18 (Sidebar conference ended.)

19 THE COURT: All right, I am going to deny the motion
20 to dismiss the Indictment. I am going to need to assimilate the
21 testimony and look at the briefing again on the motion to
22 suppress, so I will get a decision on that as soon as possible.

23 Thank you very much for coming in. Your briefing was
24 excellent as usual.

25 MR. BROWN: Your Honor, there was one issue with

Certificate of Service

I hereby certify that on May 28, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

By: /s/ James H. Locklin
JAMES H. LOCKLIN
Deputy Federal Public Defender

No. 14-50095

**In the United States Court of Appeals
for the Ninth Circuit**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MICHAEL JOSEPH PEPE,

Defendant-Appellant.

On Appeal from the United States District Court
for the Central District of California

The Honorable Dale S. Fischer, Presiding

No. CR-07-00168-DSF

Appellant's Excerpts of Record
[Volume 3 of 12]

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[†] Although this document and the two orders that follow were not filed until after the judgment and notice of appeal were filed, they are placed here in the excerpts because they relate to the trial proceedings.

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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION
13

14 UNITED STATES OF AMERICA,)
15 Plaintiff,)
16 v.)
17 MICHAEL PEPE,)
18 Defendant.)
19

NO. CR 07-168-DSF

**SUPPLEMENTAL
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF MOTION TO
SUPPRESS EVIDENCE**

20
21 Defendant, Michael Pepe, through his counsel of record, Deputy Federal Public
22 Defender Carlton F. Gunn and Deputy Federal Public Defender Charles C. Brown,
23 hereby files the attached supplemental memorandum of points and authorities

24 ///

25 ///

26 ///

27 ///


1 in response to the Court's minute order dated December 5, 2007.

2
3 Respectfully submitted,

4 SEAN K. KENNEDY
5 Federal Public Defender

6
7 DATED: December 20, 2007


8 By


9 CARLTON F. GUNN
10 Deputy Federal Public Defender

11 SEAN K. KENNEDY
12 Federal Public Defender

13 DATED: December 20, 2007

14 By


15 CHARLES C. BROWN
16 Deputy Federal Public Defender
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I.

3 INTRODUCTION

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5 On June 26, 2007, the defense filed a motion to suppress evidence in which it
6 argued, inter alia, that a warrantless search of Mr. Pepe's computer violated the
7 Fourth Amendment. The government filed an opposition to the motion, the defense
8 filed a reply, and the Court held a hearing on the motion on October 29, 2007 and
9 December 3, 2007.

10
11 On December 5, 2007, the Court filed a minute order denying the motion in
12 part but ordering further briefing on the computer search issue. This supplemental
13 memorandum of points and authorities is filed in response to that order.

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15 II.

16 ARGUMENT

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18 A. THE COURT SHOULD RECONSIDER ITS CONCLUSION THAT THE
19 FOCUS SHOULD BE ON COMPLIANCE WITH FOREIGN LAW.

20
21 Initially, the defense asks the Court to reconsider its conclusion that the focus
22 in analyzing the constitutionality of the initial warrantless computer search should be
23 on compliance with foreign law. *United States v. Barona*, 56 F.3d 1087 (9th Cir.
24 1995) and the other joint venture foreign search cases involve searches done *jointly*
25 by American and foreign officials, not searches done by American officials alone at
26 the request of foreign officials. Extending the joint venture case law to searches done
27 by Americans alone would lead to absurd results; for example, a foreign official's
28 request that American officers search the home of an American citizen in Los

1 Angeles, while the American citizen is still living there, would become subject to
2 foreign search standards rather than American search standards. In addition, the
3 rationale underlying the joint venture search standard – that American courts cannot
4 and should not control the conduct of foreign law enforcement officers – does not
5 apply when the search is conducted solely by American officers. American courts
6 can and should control the conduct of American officers.

7
8 The *Barona* case cited in the Court's order is actually the mirror image of the
9 present case. In *Barona*, Danish authorities conducted a search – specifically, a
10 wiretap – at the request of American authorities, *see Barona*, 56 F.3d at 1094, and the
11 Court held that Danish law is what set the Fourth Amendment standard, *see id.* at
12 1094. Here, there is the opposite scenario: American authorities conducting a search
13 at the request of foreign authorities.¹ It follows that the controlling standard should
14 also be the opposite, *i.e.*, American search requirements should set the Fourth
15 Amendment standard.

16
17 B. EVEN IF THE FOCUS IS CAMBODIAN LAW, THE WARRANTLESS
18 COMPUTER SEARCH MUST BE FOUND INVALID.

19
20 Even if the Court adheres to its conclusion about the Fourth Amendment
21 standard to be applied, it should grant the motion as to the initial warrantless
22 computer search. The first reason for this is that there was no Cambodian search
23

24
25 ¹ This is even assuming the correctness of the Court's conclusion that the
26 forensic computer examination was undertaken in order to aid Cambodian officials,
27 with which conclusion the defense respectfully disagrees. The additional report of
28 investigation prepared by Agent Phillips that is attached as Exhibit A provides further
evidence that there was at the very least a dual purpose underlying the forensic
computer examination. That report contains a directive to the forensic computer
examiner to "conduct forensic analysis on all electronic media and make two copies
of all of the images for ICE Bangkok and the AUSA." Exhibit A, at 2.

1 warrant authorizing the search of the computer. To begin, the only search warrant
2 that the Cambodian police ever got was obtained after the searches and retroactively
3 dated June 17, 2006, as evidenced by the exhibits which are discussed in more depth
4 in the original memorandum of points and authorities submitted with the Motion to
5 Suppress Evidence. *See* Motion to Suppress Evidence, at 5, 8 & Exs. E, F. And even
6 the search warrant obtained after the fact authorized officers to search only “the
7 *residence* at number 83, Road 596, Subdistrict Boeng Kak II, District Tuol Kork, City
8 of Phnom Penh, with a resident named Michael Joseph.” Motion to Suppress
9 Evidence, Exhibit E (emphasis added). It did not authorize the additional search of a
10 computer and computer media. It certainly did not authorize such a search weeks
11 later, or even months later in September, which was when the search of the computer
12 here appears to have actually taken place.²

13
14 Then there is a second reason the search of the computer violated Cambodian
15 law, somewhat related to the first. That is that under Cambodian law, searches “must
16 be authorized by one of the judges of the competent court or by the prosecutor.”
17 Motion to Suppress Evidence, Exhibit I, art. 20, § 2. The request for the search of the
18 computer here, according to Agent Phillips’s testimony, was from the police.

19
20 Then there is a third reason the initial warrantless computer search violated
21 Cambodian law. That is that Mr. Pepe was not present. A special provision of
22 Cambodian law that goes beyond American search law requirements is that
23 “[s]earches must be conducted in the presence of the suspect.” Motion to Suppress
24 Evidence, Exhibit I, art. 20, § 1. That this requirement applies not only to the initial
25

26 ² The report prepared by the forensic computer analyst indicates that the
27 computer was received on June 30, 2006 and that an initial duplicate image was made
28 then, but that the actual forensic analysis took place on September 19, 2006, when the
analyst discovered that a second duplicate image had to be made due to computer
failure. *See* Motion to Suppress Evidence, Exhibit H.

1 search in which items are taken from a house but also to subsequent searches is
2 evidenced by a portion of the CD of the searches which was introduced into evidence
3 at the hearing as Defense Exhibit 105.³ This CD shows that Mr. Pepe was present not
4 only at the initial searches of his house but also when agents looked through his
5 property at the Cambodian police station. *See* Def. Ex. 105, CD1, time counter 11:48.
6 Yet Mr. Pepe was not present during any part of the search of his computer.⁴

7
8 Finally, Agent Philips cannot claim some sort of good faith belief that there
9 was no problem, because he knew about the foregoing requirements of Cambodian
10 law. Indeed, he so testified at the hearing. First, he testified that he knew Cambodian
11 law required a search warrant. Second, he testified that he knew Cambodian law
12 required the defendant to be present during a search.⁵

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15 * * * * *

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18 ³ This exhibit was retained by defense counsel after the hearing but can be
19 returned to the Court if the Court wishes.

20 ⁴ A second section of the article of the Cambodian code which requires the
21 defendant to be present during the search does add the caveat "if possible," Motion to
22 Suppress Evidence, Exhibit I, art. 20, § 2, and the government could argue that it was
23 not possible to have Mr. Pepe in Singapore. Even assuming this qualification can
24 override the unqualified requirement in section 1 of the same article, it does not save
25 the government here. The search took place in Singapore only because of the
26 government's choice of location. To argue that the government can avoid Cambodian
27 limitations by moving the property to an American facility in another country but not
28 have to accept American limitations is the grossest example of allowing a party to
have its cake and eat it too.

26 ⁵ If the government attempts to offer a supplemental declaration containing
27 some sort of equivocation by Agent Phillips on these points, the Court should not
28 accept that declaration. It would be unfair to accept additional self-serving evidence
only after the Court's request for supplemental briefing and/or defense counsel's
response have pointed out weaknesses in the government's presentation.

III.

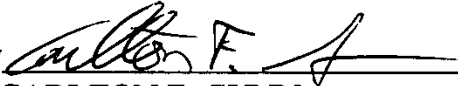
CONCLUSION

The Court should grant the defense motion as to the initial warrantless computer search.

Respectfully submitted,

SEAN K. KENNEDY
Federal Public Defender

DATED: December 20, 2007

By 
CARLTON F. GUNN
Deputy Federal Public Defender

SEAN K. KENNEDY
Federal Public Defender

DATED: December 20, 2007


By 
CHARLES C. BROWN
Deputy Federal Public Defender

EXHIBIT A

O F F I C I A L U S E O N L Y

DEPARTMENT OF HOMELAND SECURITY ICE	PAGE 1
R E P O R T O F I N V E S T I G A T I O N C O N T I N U A T I O N	CASE NUMBER BK07QR06BK0006
	REPORT NUMBER: 003

On June 16, 2006, Assistant ICE Attache (AIA) Gary Phillips received information that the Cambodian National Police (CNP) were conducting surveillance on Michael Joseph PEPE's residence located at Street 596, House 83, Tol Kork, Phnom Penh, Cambodia. PEPE was placed under surveillance based on a complaint from a 12-year-old girl, which she said she was raped by PEPE.

At approximately 1240 hours, after PEPE departed his residence and was observed at a tour business located on Norodom Street, Phnom Penh, CNP officers arrested him for rape and debauchery. Prior to arresting PEPE, CNP officers obtained a search warrant for his residence, described above.

At approximately 1320 hours, several CNP officers, accompanied by IJM, WHI, the Cambodian Prosecutor, the Diplomatic Security Service (DSS) and ICE Bangkok, executed the search warrant.

Discovered in PEPE's compound were several items of evidentiary value. The following is a partial list of the items discovered at his house:

- * Located in the driveway was a white Jeep bearing Cambodia license 01-417
- * Located in the living area was a carved wooden fish (as described by the victims)
- * Several photographs located in a cabinet in the living area
- * A large bag of candy in the kitchen area
- * Located in the maids room was a pink plastic bottle containing baby oil
- * Located in the Pool room was several baggage tags from Eva Air including a luggage tag with PEPE's name
- * Several clear plastic envelopes containing school supplies for young children, entitled the Socrates Foundation
- * Located at the top of the stairs was a red towel
- * In PEPE's bedroom officers discovered the following items, including but not limited to: KY Jelly, condoms, psychiatric type medicines (such as Lithium Carbonate), generic Viagra, unknown round and oval white pills, several other unknown types of purported prescription drugs, a wooden stick, books that were sexual in content, sheets that appeared to be stained (blood, semen or another unknown substance), a yellow bag containing white and black rope as well as duct tape. Other items included ointments, long strips of cloths that were tied in slip knots, clothes, and documents
- * Adjacent to PEPE's bedroom was a room dedicated for massage. The room only had one piece of furniture, a massage table. Located on top of the table were children's books, a "Fun Spell" game, tampons, "Phonics for Kids", and a notebook. Located in the corner of the room was an old computer, absent the hard drive
- * Located in the victims room were several stuffed animals, children's

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O F F I C I A L U S E O N L Y

DEPARTMENT OF HOMELAND SECURITY ICE	PAGE 2
R E P O R T O F I N V E S T I G A T I O N C O N T I N U A T I O N	CASE NUMBER BK07QR06BK0008
	REPORT NUMBER: 003

- clothes, toothpaste for kids and stained sheets and a stained curtain
- * Located in PEPE's computer workroom was a computer, flashcard, memory card, pornographic CD's (adult and what appears to be suspected child pornography), a bestiality CD, documents, books, photographs, emails, email accounts, business cards, articles from the Cambodian Daily regarding pedophiles, a map cover entitled "Sex With Children is a Crime", calendar diaries, games, a night vision scope, a photograph of PEPE and the King of Cambodia, a game entitled "Body Parts", medicines, pornographic photographs, PEPE's California drivers license, a copy of PEPE's passport, and other miscellaneous items.

The preceding is only a partial list of the items that were seized from PEPE's residence. The hard drive, flashcard and memory card will be turned over to ICE Singapore, SS/A David Galante for forensic analysis.

Investigation will continue.

Collateral Request:

ICE Singapore, SS/A David Galante: As discussed earlier, please conduct forensic analysis on all electronic media and make two copies of all of the images for ICE Bangkok and the AUSA.

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Case 2:07-cr-00168-DSF Document 72 Filed 12/20/07 Page 1 of 22 Page ID #:853

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9 Attorneys for Plaintiff
10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,) CR No. CR 07-168-DSF
14 Plaintiff,) GOVERNMENT'S SUBMISSION IN RESPONSE
15 v.) TO COURT'S ORDER DATED DECEMBER 5,
16 MICHAEL JOSEPH PEPE,) 2007; DECLARATIONS OF KOEUT RUTH,
17 Defendant.) SAMBO LY, AND GARY J. PHILLIPS
18)

19 Plaintiff United States of America, by and through its
20 counsel of record, hereby submits its additional briefing in
21 response to the order of this Court dated December 5, 2007. This
22 response is based on the attached memorandum of points and
23 authorities and declarations, the government's consolidated
24 oppositions to defendant's suppression motions and the
25 declarations attached thereto, the Declaration of Special Agent
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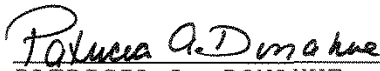
Case 2:07-cr-00168-DSF Document 72 Filed 12/20/07 Page 2 of 22 Page ID #:854

1 Nguyen-Galante, the files and records of this case, and any
2 additional argument and evidence presented at the hearing.

3 Dated: December 20, 2007 Respectfully submitted,

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6 Assistant United States Attorney
Chief, Criminal Division

7
8 
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MEMORANDUM OF POINTS AND AUTHORITIES**I****INTRODUCTION**

In the December 5, 2007 Order, this Court required additional briefing regarding three topics. As set forth below, the additional information requested by the court supports the government's position that the search of the computer media seized by the Cambodian National Police from defendant's Phnom Penh residence pursuant to a search warrant was authorized by that warrant, and Assistant ICE Attache Gary Phillips and ICE Special Agent Nguyen-Galante had a good-faith belief that the search of the computer media complied with Cambodian law. For the reasons set forth herein and in the government's prior briefing in opposition to defendant's motion to suppress evidence, the government respectfully requests that the court deny the motion.

II**ARGUMENT**

A. The Cambodian Warrant Authorized the Search of Computers and Computer Media Contained Within Defendant's Home

The first issue the Court ordered the parties to address was whether the Cambodian warrant, which authorized the search of Defendant's home, also authorized the search of computers and computer media within it. As set forth in the attached Declaration of Koeut Rith, who is the Under Secretary of State at the Ministry of Justice in Cambodia, provides training for judges and court officers on the new code of criminal procedure in

1 Cambodia, and has co-authored books on Cambodian Law, under
2 Cambodian law, all search warrants authorize the police to search
3 and seize all suspected items inside a suspect's residence,
4 including computers and computer media. (Rith Decl.
5 ¶ 2, Ex. A). In Cambodia, when the police seize computers or
6 computer media, officers trained in computer technology
7 automatically are allowed to search that computer and computer
8 media for evidence in connection with the crime. (Id.) The
9 officers may either search the computer and media at the search
10 location or remove the computer and media for forensic analysis.
11 Prior to trial, the prosecutor will decide whether or not to
12 admit the materials found on a seized computer or media in court.
13 If the police discover child pornography on the computer and/or
14 the media, that will be strong evidence in court. (Id.)

15 In this case, because the police obtained a warrant issue by
16 the prosecutor, any evidence in connection with the crime,
17 including computers and computer media seized from defendant's
18 residence, was accomplished in accordance with Cambodian law.
19 (See Rith Decl. ¶ 3). In addition, the police would have been
20 allowed to send the computers and computer media to an outside
21 source, such as another law enforcement agency, for forensic
22 analysis. (Id.) Accordingly, the Cambodian warrant authorized
23 the search of the computers and computer media.

24 **B. The Warrant Was Obtained Before the Search was Conducted**

25 In its order, the Court also asked for additional briefing
26 regarding "Defendant's evidence that the warrant was obtained
27 after the Cambodian Search was conducted establishes that the
28

1 warrant was not valid for the purpose of the Singapore search."

2 Defendant claims in his motion that the "Summary Report"
3 accompanying the search warrant was prepared on June 19, 2006,
4 two days after the initial execution of the search. (Def.'s Mot.
5 to Suppress, at 5.) In addition to the date of the document,
6 Defendant points to a statement indicating a June 18, 2006,
7 interview of one of the child victims to suggest that the
8 preparation of this report was an afterthought. (Id.) As set
9 forth below, this claim is without merit.

10 The government asked another interpreter, Sambo Ly, to
11 examine the Summary Report and compare it to the original
12 translation. According to Ms. Ly, the original interpreter
13 incorrectly translated several of the dates and numbers in his
14 translation. (See Decl. of Sambo Ly, dated 12/20/07 ("Ly
15 Decl."), ¶ 2.) For example, at the top right hand corner of the
16 first page of the document, the interpreter incorrectly
17 translated the date of this document as "19 June 2006." (See
18 id.) Ms. Ly notes that the correct date is "17 June 2006."
19 (See id.) This date corresponds with the date that the Cambodian
20 National Police obtained the Residential Search Warrant for
21 Defendant's residence. (See Decl. of Gary J. Phillips, dated
22 8/23/07 (Docket No. 39-2) (Phillips Decl. I"), Ex. A.)

23 Ms. Ly also noted that the interpreter translated the number
24 of the Summary Report as "450/06" instead of "449/06" (See Ly
25 Decl. at ¶ 2.) This number is important because in the
26 Residential Search Warrant, the prosecutor says that he saw
27 "report number 449/06 R.M.K., dated 17 June 2006" (See
28

1 Phillips Decl. I, at Ex. A.) In other words, the prosecutor
2 reviewed the Summary Report before the search warrant was
3 obtained on June 17, 2006.

4 Another ambiguity cleared up by Ms. Ly is the date of the
5 child victim's interview. In the translated Summary Report, the
6 interpreter translated the this date as "18 June 2006." However,
7 Ms. Ly notes that the correct date is "15 June 2006." (See Ly
8 Decl., at ¶ 2.) Further, in the Khmer Summary Report, the
9 numbers "15" and "2006" are written in Arabic numbers
10 approximately half-way down the page in approximately the same
11 position as they are in the translated Summary Report. (See Ly
12 Decl. Ex. A).

13 Finally, Ms. Ly points to the authorization of the
14 prosecutor at the bottom of the second page of the Summary Report
15 and notes that the interpreter correctly translated the date next
16 to the prosecutor's signature as "17/6." (See Ly Decl., at ¶ 3.)
17 The fact that the prosecutor chose to include the date (in Arabic
18 numerals) next to his signature on a court document (a practice
19 also followed by American lawyers) reinforces that the Summary
20 Report was prepared on June 17, 2006, and not June 19, 2006, as
21 alleged by Defendant.

22 Accordingly, Defendant's claim that the preparation of the
23 Summary Report somehow invalidates the Singapore search fails.
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1 **C. Assistant Attache Phillips and Special Agent Nguyen-Galante**
2 **Had, and Continue to Have, a Good-Faith Belief that the**
3 **Search of Defendant's Computer and Computer Media Complied**
4 **with Cambodian Law**

5 As the Ninth Circuit explained in United States v. Barona,
6 56 F.3d 1087, 1091 (9th Cir. 1995), if a joint venture is found
7 to have existed, "'the law of the foreign country must be
8 consulted at the outset as part of the determination whether or
9 not the search was reasonable.' If foreign law was not complied
10 with, 'the good faith exception to the exclusionary rule becomes
11 part of the analysis. The good faith exception is grounded in
12 the realization that the exclusionary rule does not function as a
13 deterrent in cases in which the law enforcement officers acted on
14 a reasonable belief that their conduct was legal.'" Id. at 1092-
15 93 (quoting United States v. Peterson, 812 F.2d 486, 490, 492
16 (9th Cir. 1987)). In Peterson, the Ninth Circuit held that even if
17 the Philippine wiretap was illegal under Philippine law, reliance
18 on its legality was objectively reasonable by the United States
19 authorities participating in the joint narcotics investigation.
20 As the Ninth Circuit explained, "Permitting reasonable reliance
21 on representations about foreign law is a rational accommodation
22 to the exigencies of foreign investigation." Id. at 492. In
23 United States v. Juda, 46 F.3d 961, 968 (9th Cir. 1995), the
24 Ninth Circuit held that the good faith exception to the
25 exclusionary rule applied because the Drug Enforcement
26 Administration agent reasonably relied on the representations by
27 an Australian official that no warrant was required to place a
28

1 transmitter on a vessel in an Australian port.

2 In this case, as set forth above, the government submits
3 that the search of the computer media was legal under Cambodian
4 law. However, even if it was not, Assistant Attache Phillips and
5 Special Agent Nguyen-Galante believed in good faith that it was.
6 Attach Phillips has been assigned to ICE Bangkok for five and
7 one-half years, where he has participated in over 70 child
8 exploitation investigations. He has observed several searches
9 conducted by the Cambodian National Police, and he has observed
10 the CNP seize computers and computer media on several occasions.
11 To his knowledge, there is no requirement under Cambodian law
12 that a separate showing or a separate warrant is required to
13 search and seize computers or computer media. (Phillips Decl.
14 ¶ 3). Based on his extensive experience working with law
15 enforcement in Cambodia, he believed that the search of the
16 computers and computer media were lawful under Cambodia law, and
17 he conveyed that information to Special Agent Galante, who
18 conducted the forensic analysis. (Phillips Decl. ¶ 3; Galante
19 Decl. ¶¶ 5,6).

20 The government therefore respectfully submits that the
21 warrant authorized the search of the computers and computer
22 media, and that even if it did not, the good-faith exception to
23 the exclusionary rule applies.

DECLARATION OF SAMBO LY

I, SAMBO LY, hereby declare:

1. I was born in Cambodia and am a native speaker of Khmer. I currently am employed by the Alameda County Medical Center where I am the Director of the Interpreter Services Department and the Program Coordinator for the Refugee Health Program. I have been interpreting between Khmer and English since 1979. I have served as an interpreter for the Khmer language in Superior and Family Courts of Alameda County, California, and served as a translator and interpreter for a number of attorneys, including the United States Attorney's Office for the Northern District of California. I am not a certified court interpreter, because Khmer is not a certified language. I also am a contractor with Accent on Languages and have been translating documents associated with United States v. Michael J. Pepe, Case No. CR 07-168-DSF, since October 2007.

2. I have examined a Khmer document which bears Bates Nos. 00044 and 00045. A true and correct copy of this document is attached hereto as Exhibit A. I also have examined another interpreter's translation of this document, which bears Bates Numbers 00786 and 00787. A true and correct copy of this translation is attached hereto as Exhibit B. After reviewing the other interpreter's translation, I note that the interpreter incorrectly translated several of the dates and numbers in this translation. For example, at the top right hand corner of the first page of the document, the other interpreter translated the date of this document as "19 June 2006." The correct date is "17 June 2006." Also, the interpreter translated the number of this document on the first page as "450/06." The correct number of this document is "449/06." In addition, on the first page, the translator interpreted the date associated with the victim child's information as "18 June 2006." The correct date is "15 June 2006."

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SAMBO LY

EXHIBIT A

[illegible]

Pepe ER 361

17/6

ឧត្តមលេខីយ៍ក្រី. អ៊ិន-ស៊ុកឌី

1991-1992
1993-1994

EXHIBIT B

Ministry of the Interior
General Commissariat of the
National Police
Central Department of the
Justice Police
Department of Human
Trafficking Prevention
and Protection of Minors

Kingdom of Cambodia
Nation Religion King

Phnom Penh 19 June 2006

Number 450/06

Summary Report

Regarding: A case of sexual trafficking of children and torture, threatening "life puppets",
as well as rape.

Submitted

to the District Attorney of the Phnom Penh Municipal Court

Objective: to request a residential search warrant for house number 83 Road 596, Subdistrict Boeng Kak II, District Tuol Kork, which is the residence of Michael Joseph, male, American, to free the victim children who are being imprisoned and tortured by Michael, and search for some evidence relating to the crimes.

Referencing: The report of the NGO International Justice Mission (IJM) dated 16-06-2006.

-the report of the representative of the American Embassy 6-16 June 2006.

-information from the victim child named [REDACTED] dated 18 June 2006. IT

-the responses of the suspect named Nguyen Thi Ling, aka Tam.

-Summary Report number 133/006.

-Detainer number 831 A.Y.K of the Phnom Penh Municipal Court.

Facts: On 16 June 2006, the department received a report from the NGO International Justice Mission (IJM) and the American embassy about the activities of an American buying victim children and imprisoning them, torturing them, and forcefully raping them.

Investigation: After receiving the report of the NGO International Justice Mission (IJM), in cooperation with the American embassy, and information from the victim child named [REDACTED] IT [REDACTED]; according to the confession of the suspect named Nguyen Thi Ling, aka Tam; according to the report of the Specialist Bureau of the Phnom Penh Police Commissariat, and the Detainer from the Phnom Penh Municipal Court, our department investigated and achieved the following results:

00786

IT
-The victim child named [REDACTED], age 12, was tricked by the female named Nguyen Thi Ling, age 49, into being turned over to her faction. Another person named Sang and her husband, on day (forgotten), May, 2006, and the female named Sang and her husband promised to take her to perform lawful work as a masseuse, but instead Sang and her husband took her to be sold to an American named Michael Kostik [sic], male,, age approximately 40 years old, who resides at number 83 Road 596, Subdistrict Boeng Kak II, District Tuol Kork. After purchasing them for sex, about four days later the suspect named Michael Kostik tortured and tied the hands and feet of the victim child named [REDACTED] and also threatened her life. Then he raped her [illegible]. IT
The victim child had sustained injuries to her vagina and was bleeding profusely. Afterward, Michael telephoned to come and bring the victim child back home, and Sang gave \$100 (one hundred dollars) to her mother, then her mother took her back home. Aside from the above victim child, Michael forced 4 other victim children, including Khmer and Vietnamese children, ages from 8 to 13 years old, keeping them in his house and tying their hands and feet and torturing them, and forcing them to suck on his penis, then raping them in an inhuman fashion. Separately, Nguyen Thi Ling, aka Tam, was detained by the authorities of the Phnom Penh Bureau of Human Trafficking Prevention and Protection of Minorities on 28 May 2006. As for Sang and her husband, they got away because they did not have criminal records.

Balance and Conclusions: Relying on the report of the NGO International Justice Mission (IJM), in cooperation with the American embassy; on information from the victim children; on the responses of the suspects; on the report of the Phnom Penh Police Commissariat and the Detainer of the Municipal Court

- Sang and her husband did indeed trick a victim child into being trafficking sexually sexually [sic].

-Michael Joseph did indeed purchase the victim children and tortured and raped them.

Request: I request that the District Attorney issue a residential search warrant on the above residence in order to free the victims as well as find evidence connected with the above crimes.

-I request the detainment of Michael Joseph and Sang and her husband to be brought in for questioning to build a case for prosecution according to the law.

Department Chief

[signature]

Brigadier General Un Sokunthea

Permission to detain the suspects

[illegible]

[signature] 17/6

Nget Sarat

District Attorney

00787

Pepe ER 365

DECLARATION OF KOEUT RITH

I, KOEUT RITH, hereby declare:

1. I am Under Secretary of State, Ministry of Justice of the Kingdom of Cambodia.

A true and correct copy of my curriculum vitae is attached hereto as Exhibit A.

2. Under Cambodian law, all search warrants authorize the police to search and seize all suspected items inside a suspect's residence, including computers and computer media, which are considered to relate to the suspect's case. When the police seize computers or computer media, officers trained in computer technology automatically are allowed to search that computer and computer media for evidence in connection with the crime. The officers may either search the computer and media at the search location or remove the computer and media for forensic analysis. Prior to trial, the prosecutor will decide whether or not to admit the materials found on a seized computer or media in court. If the police discover child pornography on the computer and/or the media, that will be strong evidence in court.

3. I am informed and believe that on or about June 17 and 19, 2006, Cambodian law enforcement executed a search warrant on Michael J. Pepe's Phnom Penh residence. If the police had obtained a warrant which was issued by the prosecutor, any evidence in connection with the crime, including computers and computer media seized from the residence, would have been accomplished in accordance with the Cambodian law. Further, the police would have been able to send the computers and computer media to an outside source, such as another law enforcement agency, for forensic analysis.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

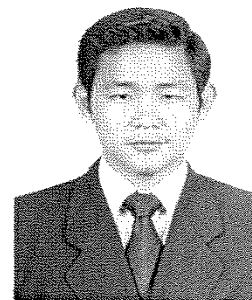
Executed this 20 day of December, 2007, at Phnom Penh, Kingdom of Cambodia.



KOEUT RITH

EXHIBIT A

CURRICULUM VITAE



Name	:	Rith KOEUT
Sex	:	Male
Nationality	:	Cambodian
Date of birth	:	[REDACTED]
Place of birth	:	Kompong Cham, Cambodia
Mobile phone	:	(855) 12 60 85 85
Email	:	rkoeut@yahoo.fr

EDUCATION

- 2004-2007 : PhD Candidate at University Jean Moulin Lyon 3, France
- 2001-2002 : DEA (Master) of Criminal Law and Criminal Sciences, University Jean Moulin Lyon 3, France
- 2000-2001 : Maîtrise (Pre-Master) in Private Law, University Lyon 2, France
- 1999-2000 : French Bachelor of Law, University Lyon 2, France
- 1995-1999 : Cambodian Bachelor of Law, Faculty of Laws and Economics, Phnom Penh
- 1994-1995 : High School Graduate

PROFESSIONAL EXPERIENCES

- 2007-Current: Under Secretary of State, Ministry of Justice
- 2005-Current: Research Assistant and Political Analyst for Supreme National Economics Council (SNEC)
- 2005-Current: Member of the Permanent Coordination Body, Council for the Legal and Judicial Reform
- 2007-Current: Trainer on new code of criminal procedure for judges and court officers
- 2002-2006: Professor of laws at Royal University of Laws and Economics, lecturing on general and special criminal law, criminal procedure, criminology, business crime, introduction to law, private international law, legal methodology and research
- Dec. 2002 : Facilitator of the French Team in charge of the fine-tuning of cambodian criminal code
- Oct. 2002 : Taking part in the conference of the experts on the International Criminal Court, held in Cambodia
- July 2002 : Interpreter from Khmer into French for Juvenile Division of the Appeal Court in Lyon, France

INTERNSHIP

- 1999 & 2002: Intern at Phnom Penh Municipal Court (five months)
- June 2000: Intern at Law Firm of Mr. Frederic DOYEZ, member of Lyon Bar (one month)

PUBLICATION

- Co-author, Book on “Introduction to Cambodian Law”, under the supervision of Professor Maurice GAILLARD and Mr. Denis SAINTE-MARIE, 1st edition 2003 and 2nd edition 2005
- Commentator of Commentary on the Draft of New Cambodian Criminal Code, collection FUNAN 2005
- Co-author, Book on “Legal Methodology – Cambodian Law”, 1st edition 2006

LANGUAGES

- French: Perfect
- English: Conversational level

DECLARATION OF GARY J. PHILLIPS

I, GARY J. PHILLIPS, hereby declare:

1. I have been employed with the United States Customs Service, now known as United States Immigration and Customs Enforcement ("ICE"), since November 1988. For approximately 14 years, I was a Special Agent in the San Diego Office of the Special Agent-in-Charge, where I investigated and/or participated in over ten child exploitation investigations. Since May 2002, I have been assigned to ICE Bangkok, where I have participated in over 70 child exploitation cases. During my current assignment, I have investigated several cases charging Americans with violations of Title 18, United States Code, Section 2423(c) (Engaging in Illicit Sexual Conduct in Foreign Places), including United States v. Michael Lewis Clark (Case No. CR03-0406L) in the Western District of Washington and United States v. Kent Frank (Case No. 04-20778-CR-JORDAN) in the Southern District of Florida. I am an Assistant ICE Attache. In that position, I am responsible for investigating a wide variety of criminal activity, including but not limited to, crimes against children, human trafficking and smuggling, terrorism, counter-terrorism, drug trafficking, and money laundering.

2. This declaration is made in support of the government's Supplemental Memorandum in Response to Court Order, dated December 5, 2007.

3. When the Cambodian National Police ("CNP") seized the computer and computer media pursuant to the search warrant from Defendant Michael J. Pepe's Phnom Penh residence, I believed that the warrant authorized the lawful seizure and search of those items. I have observed several searches conducted by the CNP and I have observed the CNP seize computers and computer media on several occasions. To my knowledge, there is no requirement under Cambodian law that a separate showing or a separate warrant is required to seize and search computers or computer media. At the time Defendant's computer and computer media were

\\

\\

1 seized, I believed, and continue to believe, that the search warrant authorized the seizure and
2 search of that computer and computer media.

3 I declare under penalty of perjury under the laws of the United States that the foregoing is
4 true and correct to the best of my knowledge.

5
6 Executed this 20 day of December, 2007, at Bangkok, Thailand.

7
8 
9 GARY J. PHILLIPS

FILED

2007 DEC 20 AM 11:44

U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

December 2007 Grand Jury

UNITED STATES OF AMERICA,	)	CR No. 07-168(A)-DSF
)	
Plaintiff,	)	<u>F I R S T</u>
	)	<u>S U P E R S E D I N G</u>
v.	)	<u>I N D I C T M E N T</u>
)	
MICHAEL JOSEPH PEPE,	)	18 U.S.C. § 2423(c): Engaging
	)	In Illicit Sexual Conduct With
Defendant.	)	A Minor In Foreign Places
)	

The Grand Jury charges:

COUNTS ONE THROUGH SEVEN

[18 U.S.C. § 2423(c)]

Between on or about September 1, 2005, and on or about June 12, 2006, defendant MICHAEL JOSEPH PEPE, a citizen of the United States with a last known address in Ventura County, within the Central District of California, knowingly traveled in foreign commerce, from Los Angeles, California, to Cambodia, and engaged in illicit sexual conduct, as defined in Title 18, United States Code, Section 2423(f), with the following girls, all of whom were

any

1 under 18 years of age at the time that defendant engaged in
2 illicit sexual conduct with them.

3 Count Victim

4 One I.T.

5 Two L.K.

6 Three S.R.

7 Four S.S.

8 Five K.S.

9 Six N.T.D.

10 Seven T.C.

11
12 A TRUE BILL

13
14 151
15 Foreperson

16 THOMAS P. O'BRIEN
17 United States Attorney

18 

19 CHRISTINE C. EWELL
20 Assistant United States Attorney
21 Chief, Criminal Division

22 ELIZABETH R. YANG
23 Assistant United States Attorney
24 Deputy Chief, Violent & Organized Crime Section

25 PATRICIA A. DONAHUE
26 JOHN J. LULEJIAN
27 Assistant United States Attorneys
28 Violent & Organized Crime Section

Case 2:07-cr-00168-DSF Document 127 Filed 02/05/08 Page 1 of 5 Page ID #:1356

1 THOMAS P. O'BRIEN
United States Attorney
2 CHRISTINE C. EWELL
Assistant United States Attorney
3 Chief, Criminal Division
PATRICIA A. DONAHUE (SBN: 132610)
4 JOHN J. LULEJIAN (SBN: 186783)
Assistant United States Attorneys
5 Violent and Organized Crime Section
United States Courthouse
6 312 North Spring Street, 15th floor
Los Angeles, California 90012
7 Telephone: (213) 894-0640/8603
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8 E-mail: patricia.donahue@usdoj.gov
john.lulegian@usdoj.gov
9

Attorneys for Plaintiff
10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,	)	CR No. CR 07-168(A)-DSF
)	
14 Plaintiff,	)	<u>SUPPLEMENTAL DECLARATION OF KOEUT</u>
	)	<u>RITH; Attachments</u>
15 v.)	
	)	Hearing Date: Feb. 6, 2008
16 MICHAEL JOSEPH PEPE,	)	Time: 10:00 a.m.
	)	Place: Courtroom of the Hon.
17 Defendant.	)	Dale S. Fischer
)	
18 _____)	


19 Plaintiff United States of America hereby submits the
20 Supplemental Declaration of Koeut Rith in connection with the
21 evidentiary hearing on the portion of defendant's motion to
22 suppress as to which the Court ordered additional briefing.
23
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28

1 Koeut Rith will be at the evidentiary hearing on February 6,
2 2008.

3 Dated: February 4, 2008 Respectfully submitted,

4 THOMAS P. O'BRIEN
5 United States Attorney

6 CHRISTINE C. EWELL
7 Assistant United States Attorney
8 Chief, Criminal Division

9 
10 PATRICIA A. DONAHUE
11 JOHN J. LULEJIAN
12 Assistant United States Attorneys

13
14 Attorneys for Plaintiff
15 United States of America
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DECLARATION OF KOEUTH RITH

1
2 1. I am Under Secretary of State, Ministry of Justice of
3 the Kingdom of Cambodia.

4 2. Attached hereto as Exhibit A is a true and correct copy
5 of a statement that I signed on November 20, 2007. My November
6 20, 2007 declaration refers to the "Khmer version of the criminal
7 law relating to search warrants." Specifically, the "Provisions
8 Relating to the Judiciary and Criminal Law and Procedure
9 Applicable in Cambodia During the Transitional Period" (herein
10 the "Provisions") sets forth the law governing searches in
11 criminal cases for the period October 1992 until August 2007. The
12 Provisions apply to crimes that were committed between October
13 1992 and August 2007.

14 3. In December 2007, I obtained from the National Archives
15 in Phnom Penh a true and correct official copy, in Khmer, of the
16 Provisions that apply to criminal cases, which is attached hereto
17 as Exhibit B. I will bring to the evidentiary hearing a book
18 entitled "Compilation of Some Khmer Laws Applicable in the
19 Kingdom of Cambodia" prepared by the United Nations Cambodia
20 Office of the High Commissioner for Human Rights" that contains
21 the Provisions at pages 2197 to 2233.

22 4. Article 20 of the Provisions sets forth the search
23 procedures that apply to two types of crime: (1) Crimes that are
24 in flagrante delicto; and (2) Crimes that are not in flagrante
25 delicto. The definition of flagrante delicto is set forth in
26 Article 18 of the Provisions. The police may arrest anyone who
27 is found committing a crime that is in flagrante delicto. A
28

1 crime is in flagrante delicto when the suspect is observed
2 committing the crime, or when the suspect is chased by a public
3 outcry right after committing the crime, or when a witness or
4 victim points out the suspect at the scene of the crime, or when
5 the suspect is trying to escape from the crime scene. All other
6 crimes that do not fall into the situations described above are
7 not in flagrante delicto.

8 6. Article 20 provides that if a crime is in flagrante
9 delicto, then no search warrant is needed to conduct a search of
10 the suspect's residence.

11 7. Article 20 provides that if a crime is not in flagrante
12 delicto, then a search warrant is required to conduct a search of
13 the suspect's residence. The search warrant must comply with the
14 following 3 requirements:

- 15 (a) It must be authorized by a judge or prosecutor;
16 (b) The search must be completed between 6:00 a.m. and
17 6:00 p.m.
18 (c) If possible, the search should be completed in the
19 presence of the suspect and two witnesses among the family.

20 8. Regarding the third requirement, any English language
21 translation of the Provisions that places the clause "if
22 possible" in the middle of the sentence, rather than at the
23 beginning of the sentence, is not accurate. The courts in
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1 Cambodia only apply the official Khmer version. According to
2 Article 5 of the Constitution of the Kingdom of Cambodia, the
3 official language of the Kingdom of Cambodia is Khmer. Therefore
4 all official documents must be in Khmer.

5 I declare under penalty under the laws of the United States
6 of America that the foregoing is true and correct to the best of
7 my knowledge.

8 Executed this 4th day of February, 2008, at Los Angeles,
9 California.



KOEUT RITH

DECLARATION OF KOEUT RITH

I, KOEUT RITH, hereby declare:

1. I am Under Secretary of State for the Ministry of Justice.
2. On or about November 19, 2007, Phov Samphy, Director General, General Department of Research and Judicial Development within the Ministry of Justice, and I met with United States Immigration and Customs Enforcement ("ICE") Assistant Attaché Gary Phillips and ICE Special Agent Pauli Carbone to discuss the law of search warrants in the Kingdom of Cambodia.
3. I have reviewed the Khmer version of the criminal law relating to search warrants. The relevant law states that, "If possible, the search should be completed in the presence of the defendant and two witnesses among the family."
4. I understand that on or about June 17 and 19, 2006, Cambodian law enforcement executed a search warrant on Michael J. Pepe's Phnom Penh residence. If that search was completed between 6:00 a.m. and 6:00 p.m., in the presence of the police and the defendant, and the police had obtained a warrant from the court which was issued by the prosecutor, the search of the residence would have been valid and any evidence would have been seized in accordance with Cambodian law.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed this 20th day of November, 2007, at Phnom Penh, Kingdom of Cambodia.



KOEUT RITH

EXHIBIT A

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE DALE S. FISCHER, JUDGE PRESIDING

United States of America,)

Plaintiff,)

)

vs.)

Case No. CR 07-168-DSF

)

Michael Joseph Pepe,)

Defendant.)

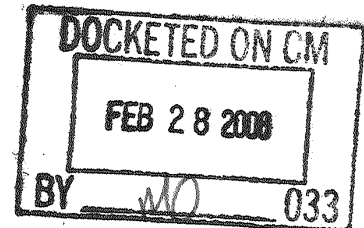
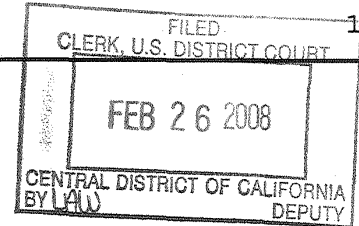
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Wednesday, February 6, 2008

Pamela A. Seijas, CSR, FCRR
Official Reporter
Roybal Federal Building
255 East Temple Street
Room 181-I
Los Angeles, California 90012
(213) 687-0446



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APPEARANCES :

FOR THE GOVERNMENT: OFFICE OF THE UNITED STATES ATTORNEY
BY: PATRICIA DONAHUE
ASSISTANT UNITED STATES ATTORNEY
JOHN LULEJIAN
ASSISTANT UNITED STATES ATTORNEY
312 N. SPRING STREET
LOS ANGELES, CA 9012

FOR DEFENDANT: OFFICE OF THE FEDERAL PUBLIC DEFENDER
BY: CARL GUNN
DEPUTY FEDERAL PUBLIC DEFENDER
CHARLES BROWN
DEPUTY FEDERAL PUBLIC DEFENDER
321 EAST SECOND STREET
LOS ANGELES, CA 90012

1 Los Angeles, California, Wednesday, February 6, 2008

2 10:01 a.m.

3 -oOo-

4 THE CLERK: Calling Calendar Item No. 2,
5 CR 07-168(A)-DSF, *United States of America vs. Michael Joseph*
6 *Pepe*.

7 Counsel, please state your appearances for the record.

8 MS. DONAHUE: Good morning, Your Honor. Patricia
9 Donahue and John Lulejian on behalf of the United States. Also
10 present in court are witnesses whom the Government has brought
11 to court pursuant to this Court's order in connection with the
12 evidentiary hearing.

13 THE COURT: Okay. Thank you.

14 MR. BROWN: Good morning, Your Honor. Charles Brown
15 and Carl Gunn on behalf of Mr. Pepe. Also present is Godwin See
16 from our office. He is our computer specialist.

17 THE COURT: Thank you. And good morning, Mr. Pepe.

18 MR. BROWN: Your Honor, may Mr. Pepe be uncuffed for
19 the purposes of today's hearing?

20 THE COURT: Deputy, is there any reason we can't
21 uncuff Mr. Pepe?

22 THE MARSHAL: No, Your Honor.

23 MR. BROWN: Thank you very much.

24 (The Marshal removed Mr. Pepe's handcuffs)

25 THE COURT: All right. How are we going to proceed?

1 MS. DONAHUE: Your Honor, the witnesses whom the Court
2 had ordered to be present are here. We spoke with defense
3 counsel and suggested a witness order. I believe the defense
4 would like one of the -- is amenable to having one of the
5 interpreters proceed first. The Government is flexible.

6 MR. GUNN: That's correct, Your Honor. I am handling
7 the suppression motion so that would be me. I wanted to move to
8 exclude witnesses, though, and then we could begin the
9 cross-examination.

10 THE COURT: All right. Is there any reason we
11 shouldn't exclude all the witnesses?

12 MS. DONAHUE: No. That's fine. We are just waiting
13 to see which one it is the defense would like to put on the
14 stand first, and we can ask the other folks to leave.

15 MR. GUNN: I can start with the one that needs to
16 catch a plane.

17 MS. DONAHUE: Mr. Madden.

18 THE COURT: All right. Mr. Madden, you may remain.
19 Please approach. Everyone else step outside of the courtroom
20 until you are called to be a witness in this matter.

21 Matthew Madden, Government's witness, was sworn

22 MR. GUNN: Before I begin, Your Honor, perhaps I could
23 have an exhibit marked for identification?

24 THE COURT: You may.

25 THE CLERK: Please state your first and last name and

1 spell your name for the record.

2 THE WITNESS: Matthew Madden, M-A-T-T-H-E-W,
3 M-A-D-D-E-N.

4 THE CLERK: Thank you.

5 MR. GUNN: If I could approach, Your Honor?

6 THE COURT: Yes.

7 MR. GUNN: I think we ended with 111 at last hearing.
8 I have it in my notes anyway. If we could mark this as Defense
9 Exhibit 112 so we won't have any duplicative numbers and if it
10 can only be placed in front of the witness when I request.

11 THE COURT: All right. You may proceed.

12 MR. GUNN: Thank you.

13 CROSS-EXAMINATION

14 BY MR. GUNN:

15 Q. Mr. Madden, what is your relationship with Sambo Ly or Ly?
16 I am not sure which way to pronounce it.

17 A. I am not familiar with him or her.

18 Q. What is your employment or occupation?

19 A. Currently I am a linguist in the translation division of
20 the Church of Jesus Christ of Latter Day Saints.

21 Q. Where exactly do you work?

22 A. Salt Lake City, Utah.

23 Q. How did you come to be involved in translation of documents
24 in this case?

25 A. It's unrelated to my current employment, but I am also a

1 translator, and previously I was a full-time translator from
2 Khmer to English and English to Khmer.

3 Q. During what period of time were you a fulltime translator?

4 A. I was fulltime between about June 2005 through June 2006,
5 and then subsequent to that, only part time.

6 Q. And what is your knowledge of Khmer? Are you fluent in
7 Khmer?

8 A. Yes.

9 Q. How did you develop that fluency?

10 A. Originally as a missionary living in Cambodia and then
11 additionally living there for a longer period of time as a
12 volunteer, as a translator. Also being married to a

13 Cambodian-speaking -- Khmer is spoken almost exclusively in the
14 home, and then working as a translator either part time or full
15 time for a period of 18 years.

16 Q. Okay. Let me step back then. So you're married to someone
17 who speaks Khmer?

18 A. I am.

19 Q. Who is ethnic Cambodian?

20 A. No. She is ethnic Vietnamese, but she grew up in Cambodia.

21 Q. All right. And if I understood you correctly, you speak
22 Khmer virtually full time in the home?

23 A. Yes.

24 Q. And over -- for how long a period of time was that?

25 A. Four years in the United States.

1 Q. And what about in Cambodia?

2 A. In Cambodia for an additional three years.

3 Q. And you read and write Khmer also?

4 A. Yes.

5 Q. And you consider yourself fluent in that as well?

6 A. Yes.

7 Q. All right. Khmer can be either typed or preprinted or it
8 can be hand-printed or handwritten; correct?

9 A. Yes.

10 Q. Is it true that it can be either hand-printed or
11 handwritten, or in the Khmer language is there just one version?
12 Do you understand my question?

13 A. Not completely, no.

14 Q. In English we have cursive handwriting and printing; right?

15 A. Yes.

16 Q. Is there a similar dichotomy in Khmer or is it just one --

17 A. Not necessarily, but of course there is a whole range of
18 different styles of handwriting, depending on the individual.

19 Q. The same way different people print differently in English?

20 A. Yes.

21 Q. All right. Now, you did a --

22 Your Honor, could I have Defense Exhibit 112 placed in
23 front of Mr. Madden, but if I could have it turned before it's
24 placed in front of him so he doesn't look at the preceding
25 declaration. If I could have it turned to the page marked as

1 Exhibit A?

2 THE COURT: Do you have a copy for the Court?

3 MR. GUNN: I'm sorry. I gave the clerk two copies.

4 THE COURT: Okay. Let me --

5 MR. GUNN: It's the declaration of Sambo Ly with the
6 two other attachments.

7 THE COURT: And the clerk is doing as you asked.

8 BY MR. GUNN:

9 Q. Now, Mr. Madden, you have a document in front of you. I am
10 going to ask you to only look at the pages I ask you to look at
11 when I ask you to look at them. You have a page in front of you
12 right now marked Exhibit A in big letters in the middle?

13 A. Yes.

14 Q. And it has a Cambodian language document following it;
15 correct?

16 A. Shall I check?

17 Q. Yes.

18 A. Yes.

19 Q. And then -- and that's a two-page document; correct?

20 A. Yes.

21 Q. And then there is a second -- another page that says
22 Exhibit B in big letters in the middle after that; correct?

23 A. Yes.

24 Q. And that has an English language document; correct?

25 A. Yes.

1 Q. And that's an English language translation that you
2 prepared of the Cambodian language document in Exhibit A;
3 correct?

4 A. Let me compare and check. Yes.

5 Q. And you translated -- the date at the top of the document
6 is 19 June 2006; correct?

7 A. Yes.

8 Q. And you translated a number of a document as -- near the
9 upper left, as 450/06; correct?

10 A. On the English one, yes.

11 Q. Yes. And then you -- there is a reference to a date
12 associated with a victim child's information sort of in the
13 middle of the text that you translated as 18 June 2006; correct?

14 A. Yes.

15 Q. And why did you translate those dates and numbers that way?

16 A. Can I approach -- can I handle those one by one?

17 THE COURT: Yes.

18 BY MR. GUNN:

19 Q. Sure.

20 A. The date at the top is simply a typo. It's not correct. I
21 can see looking at the Cambodian it should be 17, and I put 19.
22 I have no explanation for why that happened. I can see that it
23 did happen, though.

24 The number also is not correct -- I'm not sure why --
25 the document number. The date down the middle of the page where

1 it says 18 June, that number is not written in Cambodian
2 numerals. It's written in Arabic or Western numerals, and the 8
3 looks like -- or the 5, rather, looks like it could be an 8 or a
4 5. I could see how it could be either.

5 Q. And you read it as an 8?

6 A. I read it as an 8, yes.

7 Q. You weren't reading all 5's in this document as 8's, were
8 you?

9 A. I am not aware whether there are other 5's in this
10 document.

11 Q. Well, there is a -- on the second page, there is a number
12 that you did translate or take over as a 5; is there not? About
13 the sixth line down, 83 Road 596?

14 A. I see that, yes.

15 Q. So you weren't just reading every 5 as an 8; correct?

16 A. I am trying --

17 THE COURT: We are not going to take the time to
18 review the document now. If you have other things you want to
19 point him to, you may.

20 BY MR. GUNN:

21 Q. All right. You see the sixth line down on the second page
22 of that Exhibit B?

23 A. Yes. I am looking for it in Khmer.

24 Q. You are going back to Exhibit A?

25 A. Yes.

1 Q. And in the Khmer it's on the sixth line, about
2 three-quarters or two-thirds of the way over; right?

3 A. I see it. I see it now, yes.

4 Q. And that 5 you -- that number was a 5 that you read as a 5;
5 right?

6 A. Correct.

7 Q. So you weren't just reading every 5 as an 8; right?

8 A. No.

9 Q. Now, going back, you said it was a typographical error, you
10 thought, the 19th instead of the 17th?

11 A. I didn't say I thought that. I said that I typed that.

12 Q. All right. And you -- when you say it was a typographical
13 error, are you saying that you knew -- you meant to put the 17th
14 and you accidentally put the 19th?

15 A. I don't know.

16 Q. In fact, you thought it was the 19th, didn't you?

17 A. No.

18 Q. Well, you had in the text a reference to something on the
19 18th; right?

20 A. Yes.

21 Q. So it wouldn't have made sense to have the 17th at the top,
22 would it?

23 A. I wasn't checking consistency, I was only translating and
24 typing.

25 Q. Well, when you interpret a document, you have to look at

1 context and things like that; right?

2 A. Yes.

3 Q. And in this document, part of the context was it had a
4 reference to information provided on June 18th, at least as you
5 read it at the time; right?

6 A. Yes.

7 Q. And date at the top pretty clearly in context is the date
8 the report, or whatever the document was, was prepared; right?

9 A. Yes.

10 Q. So it wouldn't make sense for that date to be earlier than
11 a document it refers to in the text; right?

12 A. The date at the top?

13 Q. Yes.

14 A. Yes. That's correct.

15 Q. So, in fact, isn't it true that you put the 19th at the top
16 because you thought it was the 19th?

17 A. I don't know. The number -- the 17 in the Khmer is very
18 clearly a 7. It's a Khmer 7. It's not -- unmistakable from a
19 9.

20 Q. It's a hand-printed Khmer number; right?

21 A. Yes.

22 Q. It's not a preprinted or typed number; correct?

23 A. That's correct.

24 Q. So it depends on how you read the Khmer printing; right?

25 A. Not in this case. It's unmistakably a 7.

1 Q. Khmer printing, like English printing, can sometimes be
2 difficult to read; right?

3 A. It can sometimes, yes.

4 Q. And in this case you read that as the 19th for some reason
5 initially; right?

6 A. I -- I don't know the reason why that -- it's possible that
7 the header of this document was copied and pasted from another
8 header and I forgot to change the details because much of the
9 documents have the same header.

10 Q. But the 19th didn't make sense -- the 17th -- well, strike
11 that.

12 The 450/06, that is also hand-printing in Khmer?

13 A. It doesn't say that in Khmer. It says 449.

14 Q. All right. The --

15 A. And it's clearly --

16 Q. -- the printing or the text that you translated as 450/06
17 is hand-printing in Khmer as opposed to typing or pre-printing;
18 correct?

19 A. Yes.

20 Q. And at the time you read that as 450/06; correct?

21 A. I typed -- I typed it as 450/06. I don't know that I read
22 it. Again it's possible that it was copied and pasted from the
23 header of another document and I forgot to change the details
24 for this particular page. Many of the documents have the same
25 header so it makes no sense to translate them over and over

1 again.

2 Q. But you typed it or retained it as 450/06 --

3 A. Yes. That's correct.

4 Q. -- correct?

5 THE COURT: Mr. Madden, please wait until Mr. Gunn
6 completely finishes his answer because the court reporter can't
7 take the two of you at the same time.

8 THE WITNESS: Okay.

9 THE COURT: Let me make sure I understand. Are you
10 saying that within this same document, Exhibit A, certain
11 numbers are written in Khmer but as numbers as opposed to
12 spelling out the word, and other numbers are written in Arabic?

13 THE WITNESS: There are two ways to write numerals in
14 Khmer. There are Khmer numerals, 0 through 9 with different
15 shapes, and they also use Arabic numerals, and sometimes in the
16 same document they will move back and forth between them.

17 THE COURT: Thank you.

18 Mr. Gunn.

19 BY MR. GUNN:

20 Q. And here some of the numbers are in Khmer numerals and some
21 are what we call Roman or Western numerals; correct?

22 A. Yes.

23 Q. There were other 8's in this document; correct? In Roman
24 Western numerals?

25 THE COURT: Wait a minute. Roman numerals is an

1 entirely different thing.

2 MR. GUNN: From Western, Your Honor?

3 THE COURT: I don't know what you mean by Western. I
4 have never heard --

5 MR. GUNN: I am sorry. According to Wikipedia, which
6 I checked last night, the Roman numerals, Western numerals are
7 standard numerals --

8 THE COURT: Don't refer to Wikipedia, please. Roman
9 numerals are the I's and the X's -- the I's and the X's and the
10 V's --

11 MR. GUNN: You are right. I meant Arabic numerals,
12 Your Honor.

13 THE COURT: That's what I thought.

14 MR. GUNN: That was my mistake. My mistake,
15 Your Honor.

16 THE COURT: Do you have another question then?

17 MR. GUNN: My question was whether there were other --
18 whether there were 8's in this Cambodian language document in
19 Arabic numeral form that he translated as 8's.

20 THE WITNESS: Yes.

21 MR. GUNN: If I could have one moment, Your Honor, to
22 be consult my esteemed co-counsel.

23 THE COURT: Yes.

24 MR. GUNN: No further questions of this witness,
25 Your Honor.

1 THE COURT: Ms. Donahue?

2 REDIRECT EXAMINATION

3 BY MS DONAHUE:

4 Q. Mr. Madden, if you could turn to Exhibit A --

5 A. Okay.

6 Q. -- which you have before you, and I just am putting on the
7 screen -- is the section that I'm pointing to the date?

8 A. Yes.

9 Q. Thank you. What language is that date written in?

10 A. Khmer.

11 Q. Are those Arabic numerals or Khmer numerals?

12 A. Khmer numerals.

13 Q. In Khmer, what does that say?

14 A. It says, "Phnom Penh, 17 June, 2006."

15 Q. Is there any doubt at all in your mind that that says 17
16 June rather than 19 June?

17 A. No.

18 Q. Looking again at Exhibit A, the first page on the upper
19 left, am I pointing now to numbers?

20 A. Yes.

21 Q. Are those numbers in Khmer or in English?

22 A. They're in Khmer.

23 Q. What are those numbers in Khmer?

24 A. 449.

25 Q. Is, in fact, that number 449 and then a slash 06?

1 A. I believe so, yes.

2 Q. Is there any doubt in your mind that in Khmer that reads
3 449, not 450?

4 A. No. It cannot say 450. It clearly does not say 450.

5 Q. And finally I'd like to turn your attention to almost
6 halfway down the page. You were asked a number of questions
7 about whether something was a 5 or an 8. Am I pointing to the
8 number in question right now?

9 A. Yes.

10 Q. And is that number -- does that number appear to you to be
11 written in Khmer or in Arabic?

12 A. It's an Arabic numeral.

13 Q. And when you interpreted this document, you read that as
14 one-eight, 18; is that correct?

15 A. Yes.

16 Q. And today as you look at it, is it your view that that
17 could be either one-five or one-eight?

18 MR. GUNN: Objection. Leading, Your Honor.

19 THE COURT: Well, actually if it's an Arabic numeral,
20 I can figure it out myself, but you can go ahead and answer the
21 question.

22 THE WITNESS: Will you ask that again, please?

23 BY MS DONAHUE:

24 Q. Sure. Looking at it today, is it your opinion that it
25 could be a one-five, 15, or a one-eight, 18?

1 A. Yes.

2 Q. Setting aside the documents, when -- when you did this
3 interpretation, you were employed for a company that was
4 retained by the Department of Homeland Security to conduct
5 translations; is that correct?

6 A. Yes.

7 MS. DONAHUE: I have no further questions.

8 THE COURT: Mr. Gunn?

9 MR. GUNN: Nothing further, Your Honor.

10 THE COURT: May the witness be excused?

11 MS. DONAHUE: Yes, Your Honor. Thank you.

12 MR. GUNN: Yes, Your Honor. Your Honor, we would want
13 him available for trial, and we don't have a subpoena with us
14 because we didn't know his name. Would the Court order him -- I
15 mean, obviously I can apply to the Court for a separate subpoena
16 if I need to, but if the Court would order him to return or be
17 subject to subpoena on April 8th. I don't know if the Court
18 would be open to doing that or not. We could obviously place
19 him on call.

20 MS. DONAHUE: Your Honor, the Government is happy to
21 consult with Mr. Madden and make -- see if it's possible to make
22 arrangements for him to travel to Los Angeles for the -- to
23 testify at trial. Obviously, not to sit here on April 8th, the
24 first day of trial. But --

25 MR. GUNN: Actually, Your Honor, maybe it's better for

1 me to file an application because you need an order for the
2 travel expenses for the marshals, and I will just handle it that
3 way.

4 THE COURT: Okay.

5 Thank you, sir. You are excused for now.

6 MS. DONAHUE: Thank you, Your Honor.

7 MR. GUNN: If we could have -- I think it makes sense
8 to go with the next interpreter next, Your Honor.

9 THE COURT: All right.

10 MR. GUNN: Your Honor, 112 just got handed back to me,
11 but we may need it for the next witness.

12 THE COURT: Okay. You may return it to our CRD.

13 Sambo Ly, Government's witness, was sworn

14 THE CLERK: You may be seated. Please state your
15 first and last name and spell your first and last name for the
16 record.

17 THE WITNESS: Sambo Ly, S-A-M-B-O, L-Y.

18 THE COURT: You may proceed.

19 CROSS-EXAMINATION

20 BY MR. GUNN:

21 Q. Is it Ms. Ly or Ms. Sambo?

22 A. Ms. Ly or Ms. Sambo is fine.

23 THE COURT: No, no. Sambo is not fine. Ms. Ly.

24 BY MR. GUNN:

25 Q. I want to make sure I have the last name correct. I know

1 sometimes the . . .

2 Ms. Ly, you submitted a declaration in this matter in
3 which you suggest several corrections to an English language
4 translation of a Cambodian language document; correct?

5 A. Yes.

6 Q. And one of those corrections is not actually a translation
7 issue because it's just reading an Arabic numeral; correct?

8 A. Yes.

9 Q. You thought an Arabic numeral was one-five where it had
10 been translated as one-eight?

11 A. Yes.

12 THE COURT: Do you know what he's talking about? We
13 are not trying to trick you here. Do you remember that
14 specific --

15 THE WITNESS: Yes. I remember that specific date.

16 MR. GUNN: Maybe we could have Defense Exhibit 112
17 placed in front of her, Your Honor. We will have it for
18 reference.

19 Q. That's your declaration with the exhibits, Ms. Ly, so if
20 you need to look at it to refresh your memory about anything,
21 please just tell me you need to look at it. But if you would
22 tell me that or tell the Court that before you look at it, I
23 would appreciate it.

24 THE COURT: In other words, don't look at it yet.

25 THE WITNESS: Okay.

1 BY MR. GUNN:

2 Q. Now, there were two other items in the document that you
3 corrected, in your opinion; correct?

4 A. It's not in my opinion. It's the correct date.

5 THE COURT: In legal terms, that's your opinion.

6 THE WITNESS: Okay.

7 BY MR. GUNN:

8 Q. Someone else had translated it differently; right?

9 A. Yes.

10 Q. So according to them, the correct version was different;
11 right?

12 A. Yes.

13 MS. DONAHUE: Objection. That calls for speculation.

14 THE COURT: It's a bench trial so, yes, that was an
15 improper question, not pejoratively speaking, but I think I can
16 filter out the irrelevant stuff.

17 BY MR. GUNN:

18 Q. One of the things you changed was you changed 19 June 2006
19 to 17 June 2006; correct?

20 A. Yes.

21 Q. And another thing you changed was 450/06 to 449/06;
22 correct?

23 THE COURT: The witness is looking at the document,
24 which is perfectly fine with me because I don't have any problem
25 with it. If you have a problem with it and you want her to

1 testify in the abstract to what she remembers, then let's make
2 sure she's doing what you want her to do.

3 BY MR. GUNN:

4 Q. I would prefer you turn it over, Ms. Ly, and don't look at
5 it unless you need to look at it to remember something and then
6 tell me or the Court before you do.

7 All right. Will you do that?

8 A. Okay.

9 Q. Okay. Thank you.

10 Your Honor, could I have a blank piece -- I have lined
11 paper, and I will use that if there is nothing else. Do we have
12 any blank paper that could be placed in front of the witness?

13 Otherwise --

14 THE COURT: I don't keep supplies up here.

15 MR. GUNN: Could I approach and have a blank piece of
16 paper placed in front of the witness?

17 THE COURT: You may.

18 MR. GUNN: A lined blank piece of paper.

19 Q. Is the -- what I would like you to do on -- I have just
20 handed -- you have been handed a blank lined piece of paper;
21 correct?

22 A. Yes.

23 Q. What I would like you to do is on the first line of that
24 piece of paper, I would like you to write 19 June 2006 in Khmer.

25 THE COURT: Do you have a pen?

1 THE WITNESS: Yes, I do.

2 MR. LULEJIAN: Your Honor, I am going to object to
3 this line of questioning. She has been retained and her
4 declaration says she is just translating it. What Mr. Gunn is
5 to asking her to do is to put it in her own handwriting, which
6 may be separate from the other handwriting, as we have just
7 heard.

8 THE COURT: It may, indeed, and if this were a jury
9 trial, I might have different thoughts on the way this whole
10 this thing is going, and I am sure you would have been popping
11 up a lot more already, and I appreciate the fact that you
12 haven't.

13 However, since this is a motion to suppress, as I
14 recall, I think it may or may not, but it may be helpful to the
15 Court to have her, in her own handwriting, recognizing that
16 everybody's handwriting is different in every language, to write
17 out the numerals for me. So I am going to allow it, and it
18 may -- it may or may not help me, and I will determine that
19 after I see it.

20 Do you have a pen, ma'am?

21 THE WITNESS: Yes.

22 THE COURT: Okay, great. Would you do what Mr. Gunn
23 asked you to do.

24 THE WITNESS: Could you repeat that again?

25 BY MR. GUNN:

1 Q. On the first line of this paper I would like you to write
2 19 June 2006 in Khmer.

3 THE COURT: Well, Khmer words or Khmer numerals?

4 BY MR. GUNN:

5 Q. I am sorry. Using Khmer numerals for the numbers and Khmer
6 words for the word "June."

7 I would then like you to skip one line down so you are
8 on the third line of that piece of paper and write 17 June 2006
9 using Khmer numerals and the Khmer word for "June."

10 Then just so it's clear separately, I would like you
11 to skip down to the tenth line of that piece of paper and write
12 in Khmer numerals 450/06.

13 MR. LULEJIAN: Excuse me, Your Honor. If I could
14 suggest, so we have a clean record, perhaps she can, off to the
15 side, write what she is writing in English just so we can track
16 it later on.

17 MR. GUNN: That's fine, Your Honor.

18 MR. LULEJIAN: It should have the Khmer and then the
19 English.

20 THE COURT: That's fine.

21 MR. GUNN: Then we don't have to add lines in the
22 record.

23 Q. Did you do that -- oh. Did you do the 450/06 on the tenth
24 line?

25 A. Yes.

1 Q. All right. Two lines below that, so you skip one line and
2 then write on the next line, I would like you to write in Khmer
3 numerals 449/06.

4 And, Your Honor, could I have what she has written
5 marked as Defense Exhibit 113.

6 THE COURT: Yes.

7 MR. GUNN: And if I could offer it into evidence.

8 THE COURT: Any objection?

9 MR. LULEJIAN: No objection from the Government,
10 Your Honor.

11 THE COURT: Thank you. Take will be entered.

12 (Defendant's Exhibit 113 was marked and received)

13 MR. GUNN: Could I retrieve it, Your Honor, so, one, I
14 can see it and, two, I can put it on the ELMO so everyone else
15 can see it. I don't think I have any questions about this. I
16 just would have argument so I don't think I need to put it on
17 the screen unless --

18 THE COURT: Then return it, please, to the clerk so it
19 doesn't get lost.

20 MR. GUNN: If the clerk would mark it as 113.

21 THE COURT: I am sure the clerk will do her job.

22 MR. GUNN: I have no further questions.

23 THE COURT: Ms. Donahue or Mr. Lulejian?

24 REDIRECT EXAMINATION

25 BY MR. LULEJIAN:

1 Q. Ms. Ly, I am going to ask you to take a look at the
2 document that has been marked as Defense Exhibit 112, please,
3 and I am going to put a copy up on the ELMO.

4 MR. GUNN: If the record could reflect which part of
5 the document so the record is clear, Your Honor.

6 BY MR. LULEJIAN:

7 Q. Ms. Ly, I am going to ask you to take a look at the
8 right-hand corner where the first date in question is. I am
9 going to point to it on the screen.

10 A. It says June 17, 2006.

11 Q. Is there any doubt in your mind that is the correct date?

12 A. Could you repeat that?

13 Q. Is there any doubt in your mind that that is the correct
14 date?

15 A. That is the correct --

16 THE COURT: The question doesn't work.

17 BY MR. LULEJIAN:

18 Q. I'm sorry. Is June 17th the correct date?

19 A. Yes.

20 THE COURT: "Correct date" doesn't have a meaning.
21 You mean is it a correct translation of the date written on the
22 document? She doesn't know when the document was actually
23 prepared.

24 MR. LULEJIAN: That is correct, Your Honor. Let me
25 rephrase the question so we have a clear record.

1 Q. Is June 17th the correct translation of that date?

2 A. Yes.

3 Q. And going to the left-hand portion of the top of page where
4 there is a number, is the correct translation of that date
5 449/06?

6 A. Yes.

7 Q. And going to the middle of the document -- as that is an
8 Arabic number, Your Honor, I will let the Court make the
9 decision on that.

10 THE COURT: Thank you. Mr. Gunn?

11 MR. LULEJIAN: I have no further questions.

12 MR. GUNN: Nothing further.

13 THE COURT: May the witness be excused?

14 MR. GUNN: Your Honor, could she remain just in case,
15 based on my next cross-examination of the other witnesses, I
16 need to ask her about another Cambodian language document that
17 we translated? Unless the Government will let me put those
18 documents into evidence without needing an interpreter to check
19 them.

20 MR. LULEJIAN: Your Honor, I have no clue what
21 Mr. Gunn is talking about. She is here simply to testify about
22 this one document. I think we would have some objection if
23 Mr. Gunn is going to show her a document that she may or may not
24 have translated or seen before today.

25 THE COURT: Perhaps further explanation would be in

1 order.

2 MR. GUNN: Well, Your Honor, the Government has
3 provided me with a number of Cambodian language documents in
4 discovery. I may use one or two or three of those documents in
5 cross-examining the other witnesses.

6 THE COURT: The other witnesses today or the other
7 witnesses at trial?

8 MR. GUNN: The other witnesses today.

9 THE COURT: Okay.

10 MR. GUNN: So if there is some issue about one of
11 those documents and the translation of it, then I would like to
12 have her available, unless there is not going to be -- I mean,
13 the Government provided the documents obviously in discovery.

14 MR. LULEJIAN: Your Honor, we have a Cambodian
15 translator here for the other witnesses. And she was going to
16 be sworn in as the interpreter. I think this is asking Ms. Ly
17 to go beyond what she is here for today.

18 MR. GUNN: That would be all right, Your Honor. That
19 would be all right, assuming the documents weren't translated
20 by her. I don't know which documents were translated by which
21 translator but that would be all right.

22 THE COURT: I think that means you're excused.

23 THE WITNESS: Thank you.

24 MS. DONAHUE: Your Honor, the remaining witness is
25 Undersecretary -- the Undersecretary Koeut Rith, who submitted

1 a -- who submitted declarations in this case. He is here from
2 Cambodia. He speaks conversational English and is obviously
3 fluent in Khmer.

4 The Government has retained a Khmer interpreter for
5 him because since he is testifying, he is more comfortable
6 testifying in his native language than he is in English.
7 Although having spoken with him, I can tell you his English is
8 fairly good.

9 He traveled with another minister from the Cambodian
10 Ministry of Defense who is fluent in both Khmer and English. He
11 has explained to me that some of the legal terms are terms which
12 a court-certified interpreter here may or may not be familiar
13 with, and so we thought it might be prudent, if the Court would
14 allow it, to allow the other gentleman from Cambodia to listen
15 to the testimony solely for the purpose of ensuring that our
16 interpreter is accurately interpreting any legal terms that may
17 come up.

18 And if he hears something which he believes has just
19 been inaccurate, we would place him under oath obviously and ask
20 him and allow the defense to question him. We just want to
21 ensure that the testimony is accurately conveyed to the Court.
22 And so we would ask if the second minister could remain in the
23 courtroom.

24 THE COURT: He is not a witness, is he?

25 MS. DONAHUE: He is not a witness.

1 THE COURT: He certainly can remain --

2 MS. DONAHUE: Should he tell us that he heard
3 something translated improperly, we might ask to present that to
4 the Court, which technically would make him a witness, which is
5 why I wanted to raise this with you.

6 THE COURT: He would be an expert witness --

7 MS. DONAHUE: Yes.

8 THE COURT: -- and it would be required for his
9 expertise to be implemented to be in the courtroom at this time,
10 so I don't see a problem. Mr. Gunn, do you?

11 MR. GUNN: The only concern I have, Your Honor, is I
12 think the general rule is for better or for worse the Court
13 interpreter's translation of the testimony is binding. That is
14 certainly what we tell juries all the time. So I'm not sure his
15 testimony would be admissible. I guess we can address that if
16 and when the question arises.

17 THE COURT: Well, I think the court interpreter's
18 testimony is the testimony unless the judge says otherwise. I
19 don't have any concern at all about what Ms. Donahue has said,
20 and it occasionally does happen, in my experience, that court
21 interpreters will disagree, and then the Court has to resolve
22 the issue. I have no concern at all about that procedure,
23 especially since it's only me.

24 MR. GUNN: Fine. Well, I will just note my objection
25 if and when it arises.

1 MS. DONAHUE: Thank you, Your Honor.

2 Koeut Rith, Government's witness, was sworn

3 THE CLERK: Please be seated.

4 THE COURT: We don't have another chair there for the
5 interpreter?

6 THE INTERPRETER: That's okay, Your Honor. I can just
7 kind of stand by.

8 THE COURT: Are you one of our court panel?

9 THE INTERPRETER: I'm sorry?

10 THE COURT: Are you a member of our court panel?

11 THE INTERPRETER: No, I am not.

12 THE COURT: We need to swear in the interpreter.

13 Interpreter sworn by Courtroom Deputy Clerk

14 THE COURT: That doesn't sound quite right.

15 Interpreter sworn by the Court

16 THE COURT: Any objection to the oath, Mr. Gunn?

17 MR. GUNN: No, Your Honor. I trust the Court.

18 THE COURT: Thank you. Did we get the appearance of
19 the interpreter?

20 THE INTERPRETER: My name Mory Vann Paigne. Would you
21 like me to spell that?

22 THE CLERK: Yes, please.

23 THE INTERPRETER: M-O-R-Y, V-A-N-N, last name is P --
24 as in "Paul" -- A-I-G-N-E.

25 THE COURT: Thank you. And would the witness please

1 state and spell his name?

2 THE WITNESS: Koeut, K-O-E-U-T. Last name R-I-T-H.

3 THE COURT: Thank you. You may proceed.

4 CROSS-EXAMINATION

5 BY MR. GUNN:

6 Q. So I know how to correctly address you, your family name is
7 Rith?

8 A. No. Koeut.

9 Q. So I should address you as Mr. Koeut?

10 A. Yes.

11 Q. Thank you. Mr. Koeut, you talk in your declaration about
12 your training in Cambodian law; correct?

13 A. Yes.

14 Q. Am I correct that the Cambodian law system is what we call
15 a civil law system as opposed to a common law system?

16 A. Correct.

17 Q. And in that system, there are laws that are passed by a
18 legislative body or some executive entity; correct?

19 A. Yes.

20 Q. And if there is something in those laws that is unclear or
21 something in those laws that's left out, what body or entity
22 interprets the laws and decides what they mean?

23 A. The judge -- the Court.

24 Q. All right. And are there published decisions by the Court
25 that people look to to decide in future cases what something

1 means, or does the Judge just decide on his own in every case?

2 A. I don't understand.

3 Q. Perhaps I could give you an example from our system and ask
4 you if that's the way it works in Cambodia. In our system, if a
5 law is unclear, a court or a judge -- usually a higher court or
6 a higher judge -- interprets what the law means and writes
7 something called an opinion that people then use in future cases
8 to judge what the law means.

9 Is anything like that done in Cambodia?

10 A. In Cambodian justice, when it is not clear, the judge
11 decide -- decide on his own when there is a complaint in each
12 individual cases.

13 THE INTERPRETER: I apologize, Your Honor. May the
14 Court inquire as a technical term?

15 THE WITNESS: In Cambodian justice, when there is not
16 enough, the Court will decide properly what it is. The Court
17 will fill in.

18 THE COURT: Mr. Koeut, let me ask you to do two
19 things. I understand that you are really speaking for the
20 interpreter to hear, but I think we also have someone else who
21 we want to hear you speak in Cambodian as well.

22 And let me try to ask the question. Once the judge
23 makes the decision, does he write it down so that other people
24 in a different case will know what it is?

25 THE WITNESS: Yes. Yes.

1 THE COURT: Once the judge makes the decision and
2 writes it down, do other judges have to follow it?

3 THE WITNESS: Not -- it doesn't take every other
4 judges to decide. Most of the decision sometimes are being
5 decided by lower judge below, not the superior. Sometimes it is
6 the Superior Court judge who decide.

7 THE COURT: And when the Superior Court judge decides,
8 do all the lower court judges have to decide the same way in the
9 next case?

10 THE WITNESS: Yes.

11 THE COURT: Mr. Gunn.

12 MR. GUNN: Thank you, Your Honor.

13 Q. And those decisions by the Superior Court are written down
14 somewhere so lower judges and other people like prosecutors and
15 defense attorneys can look at them?

16 A. Just look at them.

17 MR. GUNN: Your Honor, I am having a little trouble
18 hearing the interpreter. If the Court could ask her to speak a
19 little louder.

20 THE COURT: Please. We can get you a chair. I'm not
21 sure it will help.

22 THE INTERPRETER: That's okay, Your Honor. For now.

23 BY MR. GUNN:

24 Q. There is a requirement that a defendant be present at a
25 search in Cambodian law; correct?

1 THE INTERPRETER: I'm sorry. Can you repeat the
2 question?

3 BY MR. GUNN:

4 Q. Yes. There is a requirement that the defendant be
5 present -- I'm sorry. There is a requirement that the defendant
6 be present at a search under Cambodian law; correct?

7 A. Who is the defendant?

8 Q. The owner of property that's being searched or the
9 processor of the property that's being searched.

10 A. Yes. But there are certain circumstances that are
11 different.

12 Q. That's in Article 20 of the Code of Criminal Procedure;
13 correct?

14 A. Yes.

15 Q. And it says if possible; correct?

16 A. Yes.

17 Q. And -- but that applies to any search, if possible;
18 correct?

19 THE INTERPRETER: I'm sorry. Can you repeat that?

20 BY MR. GUNN:

21 Q. But that article applies to any search, if possible;
22 correct?

23 A. Can you clarify that?

24 Q. Well, Article 20 is the article that requires that the
25 owner or possessor of property be present at a search; correct?

1 A. Like I told you, the defendant, according to Article 20, it
2 depends on certain circumstances.

3 Q. Well, actually Article 20 does use the words "if possible";
4 right?

5 THE COURT: I doubt there is an article in Cambodia or
6 any other country that says nothing but "if possible," so I
7 think you really need to make your questions more clear,
8 especially when we're using the services of an interpreter.

9 BY MR. GUNN:

10 Q. What Article 20 says is, "If possible, they" -- referring
11 to searches -- "should take place in the presence of the suspect
12 and two witnesses from among the suspect's family members";
13 correct?

14 A. Yes.

15 Q. And except for the words "if possible," Article 20 doesn't
16 have any other exceptions language, does it?

17 A. No.

18 Q. And there is no court decision that you have referred to in
19 your declaration, no Superior Court decision, that adds any
20 exceptions, other than the words "if possible," is there?

21 A. In that -- in that article, it is recognized by everyone,
22 including the Court.

23 Q. What is recognized by everyone, including the Court?

24 A. When the judge decide about that article, it is through the
25 evidence. When he decided to prosecute -- to prosecute or

1 punish the defendant, meaning that he is -- he accepted it that
2 it is the evidence. Okay. Yeah.

3 Q. In Paragraph 8 of your --

4 I'm sorry, could I have one moment, Your Honor?

5 THE COURT: Yes.

6 BY MR. GUNN:

7 Q. You filed a second declaration in this case just recently;
8 correct? Or signed a second declaration in this case just
9 recently?

10 A. I don't understand. Can you clarify the question again?

11 THE COURT: I don't think he filed it.

12 BY MR. GUNN:

13 Q. You signed a second statement in this case just recently,
14 didn't you?

15 A. What date?

16 Q. February 4th.

17 A. Correct.

18 Q. And you talk in Paragraph 8 of that declaration about the
19 correct placement of the words "if possible" in a translation of
20 Article 8; correct?

21 A. Yes.

22 Q. You're not a professional translator; right?

23 A. I am not a professional, but I know the meaning.

24 Q. You know the meaning in Cambodian; correct?

25 A. Correct.

1 Q. But your English isn't perfect; correct?

2 A. I can understand.

3 Q. Right. You speak it at what you describe as a
4 conversational level; correct?

5 A. I can read. But not as a conversational.

6 Q. All right. And you're not an expert about the meaning of
7 Article 8 in English; right?

8 MS. DONAHUE: Objection, Your Honor. I know --
9 Article 8 is incorrect. And "expert" is vague.

10 MR. GUNN: I'm sorry. Let me withdraw the question.

11 Q. Because your English isn't perfect, you don't know the
12 exact perfect translation of Article 20 from Cambodian into
13 English, do you?

14 A. If I read in English, I can understand what it really means
15 in Cambodian.

16 Q. You do agree -- well, strike that.

17 You do agree the words "if possible" are in Article
18 20; correct?

19 A. Yes. Yes.

20 Q. You just disagree about where they should be placed in the
21 English translation?

22 MS. DONAHUE: Objection to the word "disagree."

23 THE COURT: Sustained.

24 BY MR. GUNN:

25 Q. There is a search warrant requirement in Cambodian law;

1 correct?

2 A. Yes. Under certain circumstances.

3 Q. And what are those circumstances when a warrant is
4 required?

5 THE COURT: I don't want an explanation of Cambodian
6 law on search warrants. If one were to do that for American
7 law, it would take probably -- at least weeks. So if you have a
8 specific question, go ahead and ask it.

9 MR. GUNN: I'm sorry. I want to -- did I interrupt
10 the interpreter?

11 THE INTERPRETER: No. Go ahead.

12 BY MR. GUNN:

13 Q. How much evidence is needed to get a search warrant under
14 Cambodian law?

15 A. When there is a person that's under suspicion, in order to
16 identify -- I apologize -- commit a crime --

17 THE INTERPRETER: Can you repeat the question again?

18 BY MR. GUNN:

19 Q. Maybe I can rephrase the question. Some suspicion is
20 needed for a search warrant to be issued under Cambodian law;
21 correct?

22 A. Correct.

23 Q. How much suspicion is needed? Is there a way to describe
24 that?

25 A. It depends on the prosecutor -- the discretion of the

1 prosecutor.

2 Q. Are there any limits at all on that discretion?

3 A. When there is a crime that's committed or he knows
4 something about it, he examine the fact. If he thinks that
5 there is a search required, he is able to decide without any
6 limits.

7 Q. Is there a requirement -- strike that.

8 Is there anything in the Cambodian Code of Criminal
9 Procedure that says that?

10 A. Clarify it again.

11 Q. You have a copy of the Cambodian Code of Criminal Procedure
12 that was in effect in 2006 attached to your declaration;
13 correct?

14 A. Correct.

15 Q. Is there anything in that code about the prosecutor not
16 having any limits on his discretion to issue a search warrant?

17 A. In the Cambodian justice law, the prosecutor is the law.

18 THE INTERPRETER: I apologize --

19 MR. GUNN: One thing I like about their system and one
20 thing I don't, Your Honor.

21 THE INTERPRETER: Strike that. I apologize,
22 Your Honor. There is technical term that I may have to inquire.

23 THE COURT: And we may have someone who can assist us,
24 Mr. Gunn. I don't know how you want to approach this. But now
25 we have an interpreter who is admitting she doesn't understand

1 the technical term. I don't know if this witness is able to
2 explain it. If you want to try that and then we can see
3 alternatively whether we have another person who can assist us.

4 THE WITNESS: In the Cambodian justice, the prosecutor
5 decide -- the prosecutor decide -- decides the charges. All
6 prosecution.

7 BY MR. GUNN:

8 Q. Is there a requirement under Cambodian law that the search
9 warrant be read to the person whose home is being searched?

10 A. What do you mean being read?

11 Q. Most of the time or at least in many circumstances, there
12 needs to be a search warrant for there to be a search of
13 someone's property; right?

14 A. Yes. Under certain circumstances.

15 Q. When there has to be a search warrant or when there is a
16 search warrant, does it have to be read to the person whose
17 house is being searched at the time of the search?

18 A. Yes.

19 Q. Is there a requirement that the prosecutor be present
20 during the search?

21 THE INTERPRETER: The prosecutor? I'm sorry. Could
22 you --

23 BY MR. GUNN:

24 Q. You said search warrants are issued by prosecutors;
25 correct?

1 A. Yes. Yes. At certain circumstances. Sometimes.

2 Q. When the prosecutor issues a search warrant, is there a
3 requirement that the prosecutor be present during the search?

4 A. There is no reason why he cannot be there. There is no --
5 there is nothing in the law that says he cannot be there.

6 Q. In fact, Cambodian law says he does have to be there;
7 correct?

8 A. He doesn't have to.

9 THE INTERPRETER: May the interpreter inquire?

10 THE COURT: Yes.

11 (The witness and interpreter confer in Cambodian)

12 THE WITNESS: He doesn't have to. Sometimes he can,
13 though. Sometimes he doesn't have to be there.

14 MR. GUNN: Could I have one moment, Your Honor?

15 THE COURT: Yes.

16 MR. GUNN: No further questions, Your Honor.

17 MS. DONAHUE: Your Honor, may I have just a moment to
18 see if the -- there is any issue --

19 THE COURT: Why don't we take a ten minute break.

20 (Recess taken)

21 THE COURT: Thank you. Mr. Koeut, you are still under
22 oath. Ms. Donahue.

23 MS. DONAHUE: Thank you, Your Honor.

24 REDIRECT EXAMINATION

25 BY MS. DONAHUE:

1 Q. Sir, you were asked some questions about whether or not the
2 prosecutor has to be present when a search warrant is executed.

3 A. Yes.

4 Q. Is the prosecutor's presence required by Cambodian law?

5 A. No. But at his own discretion, he can decide whether he
6 should or should not be there. There is no law that --
7 obligation -- there is no obligation that required him to be
8 there.

9 Q. And does Cambodian law permit a representative or deputy
10 from the prosecutor's office to be present when a search warrant
11 is being executed?

12 A. Represent from where?

13 Q. My question is is it permissible to have a deputy or
14 representative from the prosecutor's office present when a
15 search warrant is executed?

16 A. When there is a search warrant, Ministry of Justice -- the
17 official police, judicial police, they can -- they can issue a
18 search warrant, but on their own, they can search without --
19 without the presence of the prosecutor.

20 THE INTERPRETER: I apologize, Your Honor.

21 MS. DONAHUE: I have no further questions.

22 THE COURT: Mr. Gunn?

23 MR. GUNN: No, Your Honor.

24 THE COURT: May the witness be excused?

25 MS. DONAHUE: Yes, Your Honor.

1 MR. GUNN: Yes, Your Honor.

2 THE COURT: Thank you, sir. You're excused.

3 MR. GUNN: Yes, Your Honor. I believe Mr. Phillips is
4 the last.

5 MS. DONAHUE: Your Honor, since he is the last
6 witness, can the other witnesses and ICE agents be present in
7 the courtroom?

8 MR. GUNN: I would rather not, Your Honor, just in
9 case --

10 THE COURT: Yes. Is there any possibility they will
11 be testifying at some other proceeding? If they are not
12 witnesses, this is a public courtroom. If they might be
13 witnesses, let's not cause any problems we don't need to cause.

14 MS. DONAHUE: That's a good point, Your Honor.

15 Gary Phillips, Government's witness, was sworn

16 THE CLERK: You may be seated. Please state your
17 first and last name and spell your last name for the record.

18 THE WITNESS: Good morning, everybody. My name is
19 Gary Phillips, P-H-I-L-L-I-P-S.

20 THE COURT: You may proceed.

21 CROSS-EXAMINATION

22 BY MR. GUNN:

23 Q. Agent Phillips, you were the investigating agent in this
24 case in Cambodia; correct?

25 A. Yes, sir.

1 Q. You have testified; previously in these proceedings
2 actually; correct?

3 A. Yes, sir.

4 Q. You were present during -- you were present at the house
5 Mr. Pepe rented on several occasions; correct?

6 A. Not several. Two.

7 Q. Well, you were present on the day he was arrested and there
8 was a search conducted; correct?

9 A. Yes.

10 Q. And then you were present the next day expecting the
11 Cambodian authorities to be there, but it ended up they didn't
12 show; correct?

13 A. Yes, sir.

14 Q. And then you were there a third time when they searched the
15 house again; correct?

16 A. Yes.

17 Q. So three times?

18 A. Yes.

19 Q. And the first of those occasions, the occasion on which
20 Mr. Pepe was arrested and a search was conducted was actually
21 June 16th; correct?

22 A. No.

23 MR. GUNN: Your Honor, could I have an exhibit marked
24 for identification?

25 THE COURT: Yes.

1 MR. GUNN: Thank you. I have an extra copy for the
2 Court. If we could have this marked as -- I think next in order
3 would be 114.

4 THE COURT: Okay.

5 THE CLERK: Yes.

6 (Defendant's Exhibit 114 was marked)

7 MR. GUNN: If I could have 114 placed in front of
8 Agent Phillips, Your Honor.

9 Q. Agent Phillips, Defense Exhibit 114 is a report you
10 prepared in connection with the investigation in this case;
11 correct?

12 A. Yes.

13 Q. It's an official ICE or Immigration and Customs Enforcement
14 report; correct?

15 A. Yes.

16 Q. It's part of the formal record in this case?

17 A. Yes, sir.

18 Q. It's important -- you are actually trained to write reports
19 like this; correct?

20 A. Yes, sir.

21 Q. And it's formal policy that you prepare reports like this
22 to document and memorialize events?

23 A. Yes, sir.

24 Q. Important that they be accurate?

25 A. Yes.

1 Q. Important that they be complete?

2 A. Yes, sir.

3 Q. And this is a report that talks about the arrest and -- of
4 Mr. Pepe and the search of his house the first time; right?

5 A. May I read it?

6 Q. Yes. Maybe in -- yes.

7 A. Yes, sir. Go ahead.

8 Q. And it talks about receiving information on June -- the
9 first paragraph talks about you receiving information about
10 surveillance on Michael Pepe's residence on June 16th; correct?

11 A. It does, but it's wrong.

12 Q. That wasn't my question.

13 A. I'm sorry. What was your question?

14 Q. My question was the report talks about you receiving
15 information on June 16th about Mr. Pepe's house being placed
16 under surveillance; correct?

17 A. Yes. But my answer is the same, though.

18 Q. But the report says that; right?

19 A. Yes, it does.

20 THE COURT: He answered it, Mr. Gunn, and I heard it.
21 So there is no jury so let's move on.

22 BY MR. GUNN:

23 Q. And then the report talks about Mr. Pepe -- the second
24 paragraph then talks about Mr. Pepe being arrested; correct?

25 A. May I read the second paragraph, sir?

1 Q. Yes.

2 A. Yes, sir.

3 Q. And then the third paragraph talks about Mr. Pepe's house
4 being searched; right? The third and fourth paragraph; correct?

5 A. Yes, sir, it does.

6 MR. GUNN: Your Honor, I would offer defense
7 Exhibit 114 into evidence.

8 THE COURT: Any objection?

9 MS. DONAHUE: No objection.

10 THE COURT: That will come into evidence. Thank you.

11 (Defendant's Exhibit 114 was received)

12 BY MR. GUNN:

13 Q. You took a number of photos in the investigation -- in this
14 case; correct?

15 A. Yes, sir.

16 Q. And that included photos of the house on the occasions when
17 you were there; correct?

18 A. Yes, sir, it did.

19 Q. It included photos from the first search of the house;
20 correct?

21 A. Yes, sir.

22 MR. GUNN: Your Honor, I have a --

23 Q. And you would recognize those photos if you saw them?

24 A. I would have to see them, sir.

25 MR. GUNN: Your Honor, I have a CD in our laptop

1 computer here that's a folder that was copied from a discovery
2 CD provided by the Government. If I could have it identified as
3 Defense Exhibit 115, but I have it in the computer right now so
4 we can show photos. If I could --

5 THE COURT: Any objection?

6 MR. GUNN: -- provide it to the clerk at a later time.

7 MS. DONAHUE: No objection. And I probably missed it.
8 If you could just identify for the record which CD it is?

9 MR. GUNN: It is -- it is from a discovery CD provided
10 by the Government of scanned evidence, and it's specifically a
11 folder with the name "2007, 271300001601 LI 3," which I believe
12 refers to an ICE custody property form.

13 THE COURT: All right.

14 (Defendant's Exhibit 115 was marked)

15 MR. GUNN: Your Honor, if I could have our computer
16 technician, Mr. -- if I could put it on the screen.

17 If I could have him proceed -- if I could have him go
18 to pics from Photo Album 2 on the screen and open up that
19 subfolder. And if I could have him go to -- if I could have him
20 just scroll down to Pic 616093 with the cursor. 616093. Go up
21 a little bit. And if you would highlight that.

22 Q. Okay. Do you see a file there -- it's called P6160093,
23 Agent Phillips?

24 A. Yes, sir, I do.

25 Q. With a date taken of 6/16/2006?

1 A. Yes, sir. I do.

2 MR. GUNN: Your Honor --

3 MS. DONAHUE: Objection to the characterization of it
4 as date -- I guess the characterization of "date taken."

5 BY MR. GUNN:

6 Q. It's a file that has a quote, date taken, unquote, attached
7 to it on computer of 6/16/2006, correct, Agent Phillips,
8 whatever that means?

9 A. I guess.

10 MR. GUNN: Your Honor, could I have that photograph
11 opened?

12 THE COURT: Yes.

13 BY MR. GUNN:

14 Q. That's a photograph -- actually, could we move back and go
15 down to the arrow -- that's a photograph from the search of
16 Mr. Pepe's house on June 7th -- on the first search of
17 Mr. Pepe's house; correct?

18 A. I don't know.

19 MR. GUNN: Would you move to the -- could I have
20 Mr. See, our computer technician, move to the next photograph,
21 Your Honor?

22 THE COURT: Yes.

23 BY MR. GUNN:

24 Q. That's a photograph from the first search of the house;
25 correct?

1 A. I don't know if it's from the first search or not.

2 Q. It's a photograph from a search of the house; correct?

3 A. Yes.

4 Q. Could I have Mr. See go to the next photograph. That's a
5 photograph from the search in Mr. Pepe's house; correct?

6 A. Yes, sir.

7 Q. And for the record, that photograph has a name in the upper
8 left-hand corner of "P6160095.JPG"; correct?

9 A. Maybe it's me, but this is a bit blurry. If I can play
10 with this a little bit. But P6160093, it looks like, or 95,
11 can't tell.

12 Q. Either 93 or 95?

13 A. It's a bit blurry. I'm sorry.

14 Q. But it's either 93 or 95?

15 A. Yeah.

16 MR. GUNN: Could I have Mr. See go to the next
17 photograph, Your Honor?

18 THE COURT: Yes.

19 BY MR. GUNN:

20 Q. This is another photograph from the search of Mr. Pepe's
21 house; correct?

22 A. Yes, sir.

23 Q. With "P6160096.JPG" is the name; correct?

24 A. Yes.

25 MR. GUNN: Could I have Mr. See go to the next

1 photograph, Your Honor?

2 THE COURT: Yes. You don't need to ask, Mr. Gunn.

3 MR. GUNN: I'm sorry?

4 THE COURT: You don't need to ask.

5 MR. GUNN: Very good, Your Honor.

6 Q. The next photograph has the name "P6160097.JPG"; correct?

7 A. Yes.

8 Q. It's another photograph of Mr. Pepe's house; correct?

9 A. Yes.

10 Q. During a search; correct?

11 A. I don't see anyone in the photo, but it's the same bed,
12 yes.

13 Q. It's a photo you took; correct?

14 A. I don't know if I took this particular photo.

15 MR. GUNN: Would you go to the next photo, Mr. See?

16 Q. And this is a photo named "P6160099.JPG"; correct?

17 A. Yes.

18 Q. It's another photograph from the search of Mr. Pepe's
19 house; correct?

20 A. Again, there is a closet there but no people in this.

21 Q. You took a photograph like this; right?

22 A. I do not know if I took this particular photo, but that's
23 consistent with what his house looked like.

24 MR. GUNN: Your Honor, could I have Mr. See close out
25 this photo and go back to the file listing?

1 THE COURT: Yes.

2 MR. GUNN: And could I have -- then have him go -- let
3 me ask some questions first.

4 Q. You were also at the house the next day after Mr. Pepe was
5 arrested and his house was searched; correct?

6 A. On the 17th. The 17th was the first day that I was there.

7 Q. Whichever day you were there --

8 A. Uh-huh.

9 Q. -- that's the day your report describes as the 16th;
10 correct?

11 A. The report date is wrong.

12 Q. But the report has the 16th; correct?

13 A. Yes. And that was corrected.

14 Q. In any event, whatever day that was, you were at the house
15 the next day; correct?

16 A. Yes, sir, I was.

17 Q. And you were expecting the Cambodian authorities to show
18 up?

19 A. Yes, sir, I was.

20 Q. And they didn't?

21 A. No, they did not, sir.

22 Q. But you were there -- at least while you were there?

23 A. I'm sorry. Can you say that again?

24 Q. They didn't show up, at least while you were there?

25 A. You know, I don't remember. I would have to look through

1 some of my notes to make certain.

2 Q. All right. You were there with some other people; correct?

3 A. Yes, sir.

4 Q. One of those people was Ron Dunn from the National -- from
5 the non-governmental organization that helped with the
6 investigation in this case?

7 A. I believe that's correct, sir. Again, I would have to look
8 to make sure.

9 Q. And then there were several other people associated with
10 the investigation?

11 A. Not several. I don't think several. But, again, I would
12 like to look at my notes.

13 Q. You didn't just wait outside the property; correct? You
14 didn't just wait outside the gate?

15 A. No, sir, we didn't.

16 Q. You actually went inside the compound?

17 A. Yes. That's true.

18 Q. And you walked around the compound taking photographs?

19 A. I don't believe I did that.

20 Q. You sat up or at least other people sat up on the balcony?

21 A. We sat on the balcony, yes, sir.

22 Q. And you took some photographs, though?

23 A. I don't remember taking photographs that particular day.

24 Q. You would recognize photographs of that day if you saw
25 them?

1 A. Well, there were several photos taken by several people.

2 Q. And you would recognize photos from that day if you saw
3 them?

4 A. On that particular day?

5 Q. Yes.

6 A. I don't know. I would have to see.

7 MR. GUNN: Your Honor, could I have Mr. See scroll
8 down to 6170234?

9 THE COURT: Yes.

10 BY MR. GUNN:

11 Q. And if I could have -- do you see on the cursor there on
12 P6170234?

13 A. Yes.

14 Q. On the far right it says, "Date taken: 6/17/2006"?

15 A. I do, sir.

16 MR. GUNN: Could I have Mr. See open that photograph,
17 Your Honor?

18 THE COURT: Yes.

19 BY MR. GUNN:

20 Q. That's a photograph of the balcony at Mr. Pepe's house;
21 correct?

22 A. Yes, it is.

23 Q. And that's several people who were there the day after the
24 arrest and search sitting on the balcony; correct?

25 A. Yes, sir.

1 Q. And one of those people is Ron Dunn?

2 A. Well, there is another Caucasian male there, but with his
3 head to me. It could be Ron.

4 Q. The man with the red hat, that is Ron Dunn; right?

5 A. I can't tell with -- maybe it's my computer, but I can't
6 tell.

7 MR. GUNN: Your Honor, perhaps I could have Mr. See
8 zoom in on that head a little bit.

9 THE COURT: Sure.

10 BY MR. GUNN:

11 Q. Does that help you identify him?

12 A. That's not Ron.

13 MR. GUNN: Okay. Could I have Mr. See zoom out,
14 Your Honor?

15 THE COURT: Yes.

16 BY MR. GUNN:

17 Q. Ron Dunn was there that day, too?

18 A. Yes, sir.

19 Q. And all those other people, are those -- are all those
20 people part of your investigating team that were there that day
21 or just some of them?

22 A. No. We were just observers. We weren't investigating
23 anything that day.

24 Q. I didn't say -- but you had an investigating team in the
25 case; right?

1 A. I had members from the embassy.

2 Q. And are all those people there part of that group or just
3 some of them?

4 A. No, sir.

5 Q. How many people there are part of that group?

6 A. Of which group are you referring?

7 Q. Your group of -- what I would call the investigating team,
8 what you would call the group of people from the embassy and the
9 NGO's, etc.

10 A. Okay. I believe I see Suos Vansak, Andy Simpson. I don't
11 know if that's Ron on the right or not. So it would be those
12 three.

13 Q. Is the person with the hat also a part of the group or is
14 that just some random person who was there?

15 A. No. He's part of the embassy.

16 MR. GUNN: Could I have Mr. See close that photo and
17 go to 237, Your Honor?

18 THE COURT: Yes.

19 BY MR. GUNN:

20 Q. That's a photo of the patio taken from on the balcony;
21 correct?

22 A. Yes, it is.

23 MR. GUNN: Could I now have Mr. See close that photo
24 and go to 240, Your Honor?

25 THE COURT: Yes.

1 BY MR. GUNN:

2 Q. Do you see -- now you have in front of you P6170240.JPG;
3 correct?

4 A. Yes, sir.

5 Q. And that's a photo of one of the back doors or doors to the
6 house? Down the corridor?

7 A. Can Mr. See rotate it?

8 Q. It looks like he can.

9 A. Yes.

10 Q. The answer to my question was "yes"?

11 A. Yes, sir.

12 Q. And that's the way it looked or is a photo that was taken
13 on the day you were out there, the day of the first search?

14 A. That's what this -- that's what his house looks like from
15 that angle.

16 Q. And that's what it looked like that day?

17 A. Yes.

18 MR. GUNN: Your Honor, could I have Mr. See go to 244?

19 THE COURT: Yes.

20 BY MR. GUNN:

21 Q. This is another picture of one of the doors to Mr. Pepe's
22 house; correct?

23 A. Yes.

24 Q. And which door is that? Do you know? Is that on an upper
25 floor or bottom floor?

1 A. It may be the door to the kitchen, if I recall. I would
2 have to see an overall shot of the house to see.

3 Q. But it's one of the doors to the house?

4 A. From the outside.

5 Q. And that's the way it looked on the day after the day
6 Mr. Pepe was arrested and the day of the first search?

7 A. The day after he was arrested, did you say?

8 Q. Yes. The day you were there and the Cambodian authorities
9 didn't show up.

10 A. I -- I can't -- I don't remember that. I mean, I -- this
11 is consistent with what the house looks like, but to -- that
12 specific, I don't know.

13 Q. It's consistent with the way it looked like that day?

14 A. Any day.

15 Q. And, in fact, this is a picture you took of the house that
16 day?

17 A. Again, I don't know if I took this picture, sir.

18 Q. Did anyone else take pictures that day that were provided
19 to the prosecutor to provide to us in discovery?

20 A. I don't remember.

21 MR. GUNN: Your Honor, could I go to -- have Mr. See
22 close that photo and go to 262?

23 THE COURT: Yes.

24 BY MR. GUNN:

25 Q. And just highlight that to start with. Do you see the

1 highlighted "P6170262.JPG"?

2 A. Yes, sir.

3 Q. By the way, it also has a date taken at the end of
4 6/17/2006; correct?

5 A. On this particular program, yes, it does.

6 MR. GUNN: And could I have Mr. See open that,
7 Your Honor?

8 THE COURT: Yes.

9 BY MR. GUNN:

10 Q. And that's another of the doors to the house; correct?

11 A. Yes, sir.

12 Q. And that's the way it looked on the day after Mr. Pepe was
13 arrested when you showed up at the house but the Cambodian
14 authorities didn't?

15 A. It's consistent with every time that I have been there.

16 MR. GUNN: And, Your Honor, could I have Mr. See close
17 that -- just go to the next photo would be fine. Just pop over.

18 Q. Now, this is a photo with the name "P6170263.JPG"; correct?

19 A. Yes, sir.

20 Q. And it's another door to the house; correct?

21 A. It appears so, yes, sir.

22 Q. And that's the way the door to the house -- that door to
23 the house looked on the day after Mr. Pepe was arrested when you
24 were there and the Cambodian authorities didn't show up?

25 A. Again, on all three times that I was there, yes, sir.

1 MR. GUNN: If I could have Mr. Pepe -- Mr. See close
2 that, Your Honor?

3 THE COURT: Yes.

4 MR. GUNN: Actually, I'm sorry. If I could -- yes.
5 If you could go to 265 -- I'm sorry. 248 -- I'm sorry. 260,
6 Your Honor. My apologies to Mr. See.

7 Q. You were taking photos this day; right? At least some
8 photos; correct?

9 THE COURT: What day?

10 BY MR. GUNN:

11 Q. On the day after Mr. Pepe was arrested when you were at the
12 house and the Cambodian authorities didn't show up, you did take
13 some photographs; correct?

14 A. I really can't remember. I may have. Someone else may
15 have. Someone else may have used my camera. I just don't
16 remember.

17 Q. Do you see the photo on the screen that has the name
18 "P6170260.JPG"?

19 A. Yes.

20 Q. That is a close-up of a piece of clothing with some blood
21 stain on it; correct?

22 A. Yes.

23 Q. That was taken at the house that day, correct, hanging on a
24 clothesline?

25 A. Yes, sir.

1 Q. You remember that being taken; correct?

2 A. I do remember this because of what appeared to be blood. I
3 do remember that.

4 Q. And you took it?

5 A. Again, sir, I don't know if I did or not.

6 Q. You directed that it be taken?

7 A. I don't remember if I directed anybody to do it.

8 MR. GUNN: Could I have Mr. See skip to the next
9 photograph, Your Honor?

10 THE COURT: Yes.

11 BY MR. GUNN:

12 Q. That's another photograph of the same piece of clothing;
13 correct?

14 A. Yes, sir.

15 MR. GUNN: Could I have Mr. See skip --

16 Q. For the record, it's P6170261.JPG; correct?

17 A. Yes, sir.

18 MR. GUNN: Could I have Mr. See skip to the next
19 photograph, Your Honor?

20 THE COURT: Yes.

21 MR. GUNN: Could I have him skip back to 259?

22 THE COURT: Whatever you want him to do, just tell him
23 to do. You don't have to ask.

24 MR. GUNN: All right, Your Honor.

25 Q. That's a picture of clothes that were hanging on a

1 clothesline that were taken in the compound; correct?

2 A. Yes, sir.

3 Q. And that photograph or photographs like it were taken on
4 the day after Mr. Pepe was arrested when you went to the house
5 and the Cambodian authorities didn't show up; correct?

6 A. I don't know. I don't know which day it was taken.

7 Q. But photos like that of clothes on a clothesline were
8 taken; correct?

9 A. Yes, sir. That's correct.

10 MR. GUNN: Your Honor, could I have Mr. See --
11 Mr. See, could you close that photograph and go to 246? Just
12 highlight it for now.

13 Q. Do you see highlighted there on the screen a photo or file
14 with the name "P6170246.JPG"?

15 A. I do, sir.

16 Q. And it has a date taken of 6/17/2006?

17 A. That's what is listed on here, yes, sir.

18 MR. GUNN: Could I have Mr. See open that photograph,
19 Your Honor?

20 THE COURT: Yes.

21 BY MR. GUNN:

22 Q. That's a picture that was taken the day after Mr. Pepe was
23 arrested when the police didn't show up at the house but you
24 were there?

25 A. I don't know if it was taken that day or the day before or

1 the day after, sir.

2 Q. It looks like the house looked that day; right?

3 A. Yes.

4 Q. Any differences that you can see?

5 A. Other than the water.

6 Q. What do you mean "other than water"?

7 A. Because there was a flood on the second day -- third day, I
8 believe.

9 Q. I'm asking about the second day. There was no flood on the
10 second day, was there?

11 A. I don't recall, so, no.

12 Q. The day when the Cambodian police didn't show up there was
13 no flood; right?

14 A. Not that I recall, no, sir.

15 Q. So this is consistent with the way the house looked on the
16 day the Cambodian police didn't show up that you were there?

17 A. Yes. And the first time.

18 Q. And it shows the house from the front; correct?

19 A. Yes, sir.

20 Q. And the kitchen door on the right is ajar and open, isn't
21 it?

22 A. Maybe it's me, but I can't tell.

23 MR. GUNN: Your Honor, could I have Mr. See zero in on
24 the door underneath the canopy on the right of the photograph?

25 THE COURT: Yes.

1 BY MR. GUNN:

2 Q. That photograph shows there in the expanded portion a door
3 that is ajar; correct?

4 A. It could be, but, again, I can't tell.

5 MR. GUNN: I am going to ask if Mr. See can blow it up
6 even a little more, Your Honor.

7 THE COURT: Sure.

8 MR. GUNN: All right. And I will stop there. And I
9 will just leave that for the Court's view, Your Honor.

10 Q. And for the record, that's P6170246.JPG?

11 A. Yes.

12 MR. GUNN: If I could have one moment, Your Honor?

13 THE COURT: Sure.

14 BY MR. GUNN:

15 Q. You mentioned a flood in your prior testimony; correct?

16 A. Yes, sir.

17 Q. There was a flood or a lot of water present on a third day
18 that you were at the house when the Cambodian police were there
19 and they did a second search on their part; correct?

20 A. That's correct, sir.

21 Q. You interviewed an alleged victim named I [REDACTED] T [REDACTED] prior to
22 the arrest of Mr. Pepe and the search; correct?

23 A. Yes, sir.

24 Q. And during that interview, you showed her a photograph of
25 Mr. Pepe?

1 A. I'd have to look at the video, as I really don't remember.

2 MR. GUNN: Your Honor, could I have an exhibit marked
3 for identification?

4 THE COURT: Yes. I'm sort of missing what is going on
5 here. Are we way off point or have I forgotten what we are here
6 for? I'm not sure --

7 MR. GUNN: I don't -- I obviously don't think we are
8 way off point, Your Honor.

9 THE COURT: But we have been going on for almost two
10 hours so if you don't convince me that we are on point very
11 shortly, then we are going to do something else.

12 MR. GUNN: I am almost done. I have probably five
13 more minutes. If I could have this marked for identification to
14 refresh his memory. If we could have this marked as 116 since
15 the CD was 115.

16 (Defendant's Exhibit 116 was marked)

17 BY MR. GUNN:

18 Q. Look at the bottom part of Page 25 in this transcript,
19 Agent Phillips, and see if that refreshes your memory about
20 whether you showed a photograph.

21 THE COURT: Technically, just for future reference
22 when trying cases in my court, I think you have to ask him first
23 whether there is anything that would refresh his recollection,
24 etc., but for these purposes I will allow him to do that.

25 MR. GUNN: All right.

1 THE WITNESS: I'm sorry, sir. I apologize. What was
2 your question?

3 BY MR. GUNN:

4 Q. Does this refresh your recollection about whether you
5 showed a photograph of Mr. Pepe to one of the alleged victims
6 who goes by the initials "IT" before he was arrested, Mr. Pepe
7 was arrested?

8 MS. DONAHUE: Your Honor, objection. This appears to
9 be outside the scope of the entire suppression motion and
10 certainly is well outside the scope of the Court's order as far
11 as what we're supposed to be here about today.

12 THE COURT: It certainly goes to impeachment. I have
13 no clue what this has to do with this motion.

14 MR. GUNN: Your Honor, what I'm about -- I believe the
15 transcript reflects that he did show a photo. Assuming he
16 agrees with that, my next question was going to be whether he
17 told the Cambodian authorities that, which I think goes to his
18 good faith. Because she did not identify the photo. Said that
19 was not the man.

20 THE COURT: Well, I, frankly, don't see how that would
21 do that, but I don't recall enough about what is going on, so I
22 will allow him to answer the question.

23 BY MR. GUNN:

24 Q. Does this refresh your memory about whether you showed a
25 photograph of Mr. Pepe to the alleged victim, IT, during that

1 interview?

2 A. Yes, sir.

3 Q. That was before the day Mr. Pepe was arrested; correct?

4 A. If I may take a second and see the date?

5 Q. Sure.

6 A. Okay. 6/16.

7 Q. And you did show her the photograph?

8 A. Yes, sir.

9 Q. And she said that was not the man; correct?

10 A. I need to read it a second.

11 Q. All right.

12 THE COURT: Well, the question is not what this says,
13 sir. The question is what you recall. If you don't recall,
14 then the question would be whether this refreshes your
15 recollection.

16 THE WITNESS: I don't remember what she said that day.

17 BY MR. GUNN:

18 Q. Would it refresh your recollection if you read the
19 transcript?

20 A. Probably.

21 Q. Would you read the bottom part of Page 25 and the upper
22 part of Page 26?

23 A. Okay, sir.

24 Q. Does that refresh your recollection about whether you
25 showed her a photograph of Mr. Pepe and she said that was not

1 the man?

2 A. Yes, sir.

3 Q. And you did show her such a photograph; correct?

4 A. A very old photo.

5 Q. And she said that was not the man?

6 A. Very old photo, and that's correct, she did say that.

7 Q. Did you tell the Cambodian authorities that fact?

8 A. I don't remember that, sir.

9 Q. Would it or would it not have been your practice to tell
10 the Cambodian authorities that fact if you were conducting a
11 parallel investigation with them?

12 A. Like I said, I don't know what I would have said two years
13 ago. I don't remember saying that.

14 Q. I'm not asking what you would have said two years ago. I
15 am asking your practice. If you are conducting a parallel
16 investigation with a foreign government and an alleged victim
17 says a photograph of the suspect is not the man, is it your
18 practice to tell the other authorities that fact or is it your
19 practice not to tell them that fact?

20 A. I guess it depends on the circumstances. I don't know how
21 to answer that question because every -- everything -- it's
22 different every single time.

23 Q. Sometimes you would not tell them that fact?

24 A. I don't know. I don't -- it depends on the circumstances.

25 Q. Are there circumstances where you would not tell them that

1 fact?

2 A. I'm just speculating. I don't know.

3 Q. Well, you just said it would depend on the circumstances.

4 Are there circumstances where you would not tell them that fact?

5 A. I don't remember --

6 MS. DONAHUE: Objection. This is asked and answered.

7 THE COURT: He hasn't answered it yet, Ms. Donahue.

8 THE WITNESS: I don't remember, is my answer. I
9 don't --

10 THE COURT: As you are sitting here today, can you
11 think of circumstances under which you would not tell the
12 authorities that fact?

13 THE WITNESS: No.

14 BY MR. GUNN:

15 Q. So did you call -- do you believe you told the Cambodian
16 authorities that fact in this instance?

17 A. I don't think I did. I just don't know. If I knew the
18 answer, I would be happy to tell you.

19 MR. GUNN: No further questions, Your Honor.

20 THE COURT: How much do you have, Ms. Donahue?

21 MS. DONAHUE: Very brief, Your Honor.

22 THE COURT: All right.

23 REDIRECT EXAMINATION

24 BY MS DONAHUE:

25 Q. Special Agent Phillips, you were shown a series of

1 photographs that -- images that are on a disk. Do you know
2 whether the dates on that disk that are associated with each of
3 those photographs is accurate?

4 A. No.

5 Q. Just to be clear, there are three dates at least associated
6 with each photograph -- date taken, date created, date modified.

7 Do you know whether those, in fact, accurately reflect
8 when those photographs were taken, created and modified?

9 A. I don't think they do.

10 Q. Why not?

11 A. Because depending on where their camera was bought, if
12 there is a time difference --

13 MR. GUNN: Objection, Your Honor. Calls for
14 speculation and expert opinion from someone who is not an
15 expert.

16 THE COURT: Well, if he has something connected with
17 this case that makes him think that they don't, that's fine, but
18 otherwise, it is speculation.

19 BY MS DONAHUE:

20 Q. Special Agent Phillips, Cambodia is approximately 15 hours
21 ahead in time; isn't that correct? From here in Los Angeles?

22 A. That is correct.

23 Q. So sometimes when it's Monday in Los Angeles, it's Tuesday
24 in Cambodia; right?

25 A. That's correct.

1 Q. After you had conducted the interview that was shown to you
2 by the defense of Victim IT, had you reached a conclusion
3 whether or not the individual who had victimized her was the
4 defendant in this case?

5 A. Not a definitive conclusion.

6 MS. DONAHUE: I have no further questions.

7 THE COURT: Mr. Gunn?

8 MR. GUNN: May I have one moment to consult with
9 counsel?

10 (Counsel confer off the record)

11 MR. GUNN: Nothing further, Your Honor.

12 THE COURT: May the witness be excused?

13 MR. GUNN: Yes, Your Honor.

14 MS. DONAHUE: Yes, Your Honor.

15 THE COURT: You are excused.

16 MR. GUNN: Your Honor -- I'm sorry. I will wait until
17 the witness steps down.

18 Your Honor, I could probably -- I could put Mr. See on
19 to testify to this, but I will proffer it and perhaps it won't
20 be disputed, that Defense Exhibit 115 is a copy of the folder
21 whose name I read earlier, copied directly from a CD of
22 discovery provided by the Government without anything done to
23 change any of the information. Mr. See could testify to that,
24 but I would proffer it. And he did the copying.

25 In addition, that the information -- the date

1 picture -- I think it's "Picture Taken," that line, is viewable
2 from the CD only in Windows Vista, so Windows Vista needs to be
3 used to look at it, if it's looked at later in the case, though
4 it's also viewable when the folder in question is copied onto a
5 hard drive -- at least the hard drive in our office -- it can be
6 viewed with Windows XP. So that I would proffer. I could put
7 Mr. See on to testify to that if it's necessary. But I guess
8 the Government can decide.

9 MS. DONAHUE: Your Honor, the Government is not asking
10 the defense to put Mr. See on. It is not suggesting that the
11 defense has somehow modified the dates.

12 MR. GUNN: And I didn't take it that way.

13 MS. DONAHUE: The dates are what they are. The dates
14 were embedded by either the camera or the computer. Whether
15 that camera or that computer accurately embedded those dates or
16 whether it didn't is not evidence that's before the Court or
17 necessarily needs to be.

18 Obviously, whatever date that camera put on is what we
19 have and what we have produced to the defense. I don't think
20 Mr. See can tell us whether the camera that took it was accurate
21 or not. So his other technical testimony about the viewing
22 software, etc., I don't think is relevant.

23 THE COURT: All right. Any other witnesses?

24 MR. GUNN: No, Your Honor. If I haven't already
25 offered into evidence, I would offer Defense Exhibit 115 into

1 evidence and Defense 114 into evidence, which is the report. I
2 think the others were just necessary for identification in
3 refreshing memory.

4 THE COURT: All right.

5 (Defendant's Exhibit 115 was received)

6 THE COURT: Any witnesses from the Government?

7 MS. DONAHUE: No, Your Honor, there are no additional
8 witnesses. The Court -- or the Government was wondering if the
9 Court -- if the interpreter could be excused. We have asked her
10 to stay because the defense had indicated that she had some
11 documents, but she apparently has to be in another court this
12 afternoon.

13 MR. GUNN: We are not going to end up putting in any
14 documents.

15 THE COURT: All right. She can be excused.

16 MS. DONAHUE: Thank you, Your Honor.

17 THE COURT: Maybe it's my lack of memory. I'm not at
18 all sure that I now have the information that I need to rule on
19 this motion, so I am going to have you do some further briefing
20 so that you can explain to me how the evidence that I have heard
21 today addresses the issues that I requested, and whatever
22 further briefing you think is necessary on the motion to
23 suppress, the single issue that was left after my previous
24 ruling. So I don't know when you'll be able to do that.

25 MS. DONAHUE: Would the Court entertain a very short

1 argument?

2 THE COURT: Sure.

3 MS. DONAHUE: The Government would respectfully submit
4 that nothing that the defendant elicited today at all addressed
5 the issues that the Court had asked.

6 The Court wanted to know whether the seizure of the
7 computer media was valid under Cambodian law and whether the
8 subsequent ICE search was valid under Cambodian law. And the
9 Government, not having Cambodian case law to submit to the
10 Court, flew over here someone who is knowledgeable about
11 Cambodian law. We submitted his declaration. His declaration
12 said quite clearly that the seizure of computer media and the
13 subsequent provision of that to ICE is authorized by Cambodian
14 law.

15 The defense didn't cross-examine him about it at all.
16 The Government submits his declaration is clear on that point.
17 He wasn't crossed on it. If the defense has any intention of
18 re-raising this in the future -- at all, we would ask that they
19 do it now while we have the man here from Cambodia and not
20 submit a brief in two weeks that says he needs to come back.

21 THE COURT: You know what? That was the missing link.
22 I was forgetting the content of the previous declaration, and I
23 apologize for not having had time to go back and read all of
24 your stuff before today.

25 MS. DONAHUE: It's the computer issue. The defense is

1 trying to relitigate what the Court has already decided. They
2 are trying to argue that the search was really on the 16th
3 instead of the 17th and, therefore, the warrant and re-raising
4 the issue would be -- the Court had asked to hear from the
5 interpreter on the issue of the document where the first
6 interpreter made a mistake and dated the report the 19th. As he
7 himself said this morning, it was the 17th. As the second
8 interpreter said this morning, it was the 17th. So there is
9 really no issue in and around that. A mistake was made, and the
10 defense has sought to capitalize on it, but that's --

11 THE COURT: As all good defense lawyers do.

12 MS. DONAHUE: No question about it, Your Honor.
13 That's why we brought the witnesses in. You know, people make
14 mistakes and they -- the defense seizes on it, and that's why we
15 are here litigating. But that's all it is, is a mistake. The
16 search was the 17th. The reports are consistent with that.
17 There is no issue surrounding that.

18 Secondly, regarding the computer media, its seizure
19 and its -- by the Cambodian National Police and the turning it
20 over to the -- to ICE for examination was legal under Cambodian
21 law. And as he said in his declaration, Assistant Attache
22 Phillips certainly thought it was legal, and he in good faith
23 accepted it from the Cambodians and provided it to the ICE
24 analyst.

25 So we would submit our pleadings did address the issue

1 the Court asked, and we would submit the Court can rule on it at
2 this time. And if there are any additional questions, certainly
3 for the folks who are here from Cambodia, we would certainly
4 make them available again. We would like the defense to be able
5 to wrap that up so we don't have to bring these people back.

6 THE COURT: Mr. Gunn?

7 MR. GUNN: Well, Your Honor, a couple of points, I
8 guess. First of all, I guess the Court has to decide factually
9 whether it was just a mistake in the interpretation or whether
10 now it's being spun a little differently. You have sample
11 writing that you can compare. I will leave that in the Court's
12 judgment. You can do that without any argument from me.

13 But there is a couple points that I think come out of
14 this that don't make it so cut and dried. First of all, there
15 is not just the issue of there not being a separate warrant for
16 the search of the computer. There is also the fact that
17 Mr. Pepe wasn't present during that search. And there is --
18 Article 20 concededly has the caveat "if possible," but I don't
19 think you get around that by sending the computer somewhere else
20 to make it not possible.

21 It was certainly possible to do that forensic
22 examination in Phnom Penh with Mr. Pepe there. And I would
23 submit that the Cambodian Article 20 requires that -- did
24 require that.

25 There is also, I think, some concern here about the --

1 the claim that the computer was taken and so on only after there
2 was a warrant, which I think was one of the issues still posed
3 by the Court. You asked about the sort of dating of the
4 searches and all that stuff.

5 This report that Phillips wrote says it happened on
6 June 16th. The photograph "Picture Taken" dates for -- you
7 know, granted, you know, maybe there's something weird about the
8 computer, I suppose, but they just coincidentally match up with
9 that. And if you look at that CD, they are consistent.

10 So I think there is some significant evidence here
11 that the search took place on the 16th, not the 17th, and that
12 meant no matter what the date was in the warrant, that the
13 search was warrantless without the warrant required by Cambodian
14 law.

15 With respect to good faith, I think there's some
16 issues here.

17 THE COURT: Could you --

18 MR. GUNN: I'm sorry. With respect to good faith, I
19 think there's some issues here. You have Agent Phillips, not
20 just showing up at the house and waiting outside the gate to see
21 if the Cambodian authorities get there, but you have him sort of
22 hanging out at the house on the balcony, going all over, taking
23 photographs of everywhere outside. And then you have this very
24 suspicious circumstance of one of the doors being wide open.
25 And, you know, what does that suggest?

1 So I think that raises just some general issues about
2 good faith and what was going on here.

3 But I don't know if you totally need to get there. I
4 mean, if the search happened on the 16th, he knew there wasn't
5 any warrant on the 16th because at the earliest, even if you
6 believe the interpreters about having made a mistake, the
7 warrant was on the 17th. And I just ask the Court -- you have
8 the Khmer written out there to compare side-by-side. The
9 question is could the printing of one be mistaken for the other,
10 and is maybe the first one the correct interpretation rather
11 than the second one.

12 I guess if the Court has any other questions, I will
13 try to respond.

14 THE COURT: I don't. I think I -- based on
15 Ms. Donahue having refreshed my recollection, I will -- I should
16 say not having refreshed my recollection but simply having told
17 me something that I had completely forgotten and will look at --
18 and if by chance I need something further, after having looked
19 at what I do have, that I feel I need more briefing -- not more
20 evidence. I think everybody seems to agree that they have done
21 the best they can with the evidence -- and based on what I have,
22 if I need further legal briefing, then I will let you know.
23 Otherwise we will get our decision out as soon as we can.

24 MR. GUNN: Two requests on that, Your Honor. I am
25 trying to squeeze in a quick ski vacation next week. Since the

1 trial got put off, I was going to do it after; now I am going to
2 do it before.

3 Also I think it would be helpful to have a transcript,
4 I think, if we were going to do further briefing. So if there
5 is any way to schedule or we could try to do that, that would be
6 helpful --

7 THE COURT: I will let you know by tomorrow whether I
8 need further briefing at all.

9 MR. GUNN: All right. I may have to get Mr. Brown --

10 THE COURT: I am sure Mr. Brown is fully capable of
11 addressing any issues I may have.

12 Anything further on this issue?

13 MS. DONAHUE: No, Your Honor.

14 THE COURT: All right. Then I would like to excuse
15 the Government and anybody related to the Government because I
16 have a question for the defense.

17 (Transcript sealed from Page 80, Line 17 to Page 82, Line 13)

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1 UNITED STATES DISTRICT COURT

2 CENTRAL DISTRICT OF CALIFORNIA

3 ---

4 THE HONORABLE DALE S. FISCHER, JUDGE PRESIDING

5
6
7 United States of America,)

8 Plaintiff,)

9)

10 vs.) Case No.

11) CR 07-168 (A) -DSF

12 Michael Joseph Pepe,)

13 Defendant.)

14)

15
16
17 REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS

18 Day 2

19 Los Angeles, California

20 Friday, May 9, 2008

21
22 Pamela A. Seijas, CSR, FCRR
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22 ALSO PRESENT: ATTACHE GARY PHILLIPS
23 ICE SPECIAL AGENT EDDY WANG
24
25

1 MR. BROWN: Just seat an alternate?

2 MR. GUNN: It's up to you.

3 MR. BROWN: I think we should just seat the first
4 alternate.

5 MS. DONAHUE: I don't think we have much alternative.

6 THE COURT: Okay.

7 (Sidebar conference ended)

8 THE COURT: All right. Our missing juror is -- is
9 that the only one that is missing Paul?

10 THE CLERK: Yes, Your Honor.

11 THE COURT: He just called and says he is a mile out.
12 We will start as soon as he gets here.

13 (Recess taken)

14 (Jury In)

15 THE COURT: Ms. Nixon, I am going to ask you to sit in
16 Seat No. 9, between those two ladies there. Do we need to
17 re-swear the jury? We don't need to re-swear them?

18 Sir, take either one of those empty seats now, and you
19 may be seated.

20 All right. Good morning. Thank you all for being
21 here and our furthest juror got here on time so now you all know
22 how long it takes in downtown L.A. traffic and where the parking
23 is and how long the elevators take, so in future, let's try to
24 get here at 8:00 as I indicated so that we can get started and
25 get this trial finished in the time that I estimated.

1 Sit back and relax.

2 Ladies and gentlemen, you have been selected and sworn
3 as the jurors and alternate jurors in this case. And I am going
4 to take a few minutes to tell you about your basic duties and
5 conduct. At the end of the trial I will give you more detailed
6 instructions. All of the Court's instructions, whether given
7 before, during or after the taking of testimony, are of equal
8 importance. You must base the decisions you make on the facts
9 and the law.

10 First, you must determine the facts from the evidence
11 received in the trial and not from any other source. Evidence
12 is the sworn testimony of witnesses, the exhibits that are
13 admitted into evidence, and any stipulations by the parties.

14 A stipulation is an agreement about the facts. If the
15 parties do stipulate to a fact in this case, I will let you know
16 specifically what that is.

17 Second, you must apply the law as I state it to you to
18 the facts as you determine them and in this way, arrive at your
19 verdict and any questions that you are instructed to answer.

20 In evaluating the testimony of witnesses, consider the
21 following questions.

22 How well could the witness see or hear or otherwise
23 sense the things about which the witness testified. How well
24 was the witness able to remember and describe what happened.

25 What was the witness's behavior while testifying. Did

1 the witness understand the questions and answer them directly?

2 Did the witness have a reason to lie such as bias or prejudice
3 or a personal interest in how the case is decided. What was the
4 witness's attitude about the case or about testifying.

5 How reasonable is the testimony when you consider all
6 the other evidence in the case. Did other evidence in the case
7 prove or disapprove any fact about which the witness testified.

8 Use your common sense and good judgment to evaluate
9 the testimony based on all the circumstances.

10 There are two kinds of evidence, direct and
11 circumstantial. Direct evidence is direct proof of a fact such
12 as testimony of a witness about what that witness saw or heard
13 or did. Circumstantial evidence is proof of one or more facts
14 from which you could conclude that other facts exist. You
15 should consider both kinds of evidence. The law makes no
16 distinction between the weight to be given to either direct or
17 circumstantial evidence. It is for you to decide how much
18 weight to give to any evidence.

19 Please understand that no statement, ruling, remark or
20 comment that I may make during the course of the trial is
21 intended to indicate my opinion as to how the jury should decide
22 the case or to influence the jury in any way in its
23 determination of the facts.

24 At times, I may find it necessary to direct one or
25 both of the attorneys, one or all of the attorneys, to do or not

1 to do certain things. I might even find it necessary to make
2 some criticism of an attorney's conduct.

3 If I do so, you must not show prejudice toward the
4 attorney or the side the attorney represents simply because I
5 have found it necessary to say something to the attorney.

6 Statements or arguments by attorneys are not evidence.
7 You must accept and follow the law as I state it to you whether
8 or not you agree with the law. If anything concerning the law
9 said by the attorneys in their arguments or at any other time
10 during the trial conflicts with my instructions on the law, you
11 must follow my instructions.

12 Questions are not evidence. Do not assume to be true
13 any insinuation suggested by a question asked a witness.

14 A question may be considered only as it helps you to
15 understand the answer. If a question is objected to and the
16 objection is sustained, which means the witness may not respond,
17 you must not guess about what the answer might have been or the
18 reason for the objection. Of course, if the objection is
19 overruled and the witness is allowed to answer, you may consider
20 that answer as you would any other evidence in the case. And
21 please remember that it's an attorney's duty to object to
22 questions that the attorney believes are not proper and you
23 should not show prejudice toward the attorney or the side the
24 attorney represents because the attorney makes an objection.

25 Sometimes I may order that evidence be stricken and

1 that you disregard or ignore the evidence. That means that when
2 you are deciding the case, you must not consider that evidence
3 for any purpose. Treat it as though you had never heard of it.

4 Some evidence may be admitted only for a limited
5 purpose. When I tell you that certain evidence has been
6 admitted for a limited purpose, you may consider it for that
7 purpose only and not for any other purpose.

8 You must not independently investigate the facts or
9 the law or consider or discuss facts as to which there is no
10 evidence. This means, for example, that you may not visit or
11 view any place that you hear described in this case. You may
12 not conduct experiments or consult the Internet, reference works
13 or persons for additional information. You can't ask anyone for
14 information relating to the case, even if you don't mention that
15 it has anything do with the case and even if you don't tell them
16 that you're on a jury. You cannot even look up a word in the
17 dictionary if you don't know or don't all agree on the meaning
18 of a word.

19 Anything like that happens, just send out a note to me
20 and I will try to help you resolve your issues. You cannot
21 consider as evidence anything you may see or hear when the Court
22 is not in session, even if what you see or hear is done or said
23 by one of the parties or one of the witnesses.

24 You must not read any news stories or articles or
25 listen to any radio or television reports about the case or

1 about anyone who has anything to do with it.

2 You must not visit or view the premises or place where
3 the crime or crimes charged were allegedly committed or any
4 other premises or place mentioned in this case. You will be
5 given notebooks and pencils. Leave them on your seat each day
6 when you leave and at each recess. You will be able to take
7 them into the jury room when you deliberate.

8 You may take notes; however, you should not permit
9 note-taking to distract you or prevent you from listening to
10 other testimony. Remember, you are the judges of the
11 believability of the witnesses.

12 Notes are only an aid to memory and should not take
13 the place of your memory. A juror who does not take notes
14 should rely on his or her recollection of the evidence and not
15 be influenced by the fact that other jurors do take notes.

16 By the way, you may see me taking a lot of notes
17 during the trial, but I take notes for completely different
18 reasons. So when you see me writing something down, it doesn't
19 necessarily mean that you should write it down.

20 Should a discrepancy exist between a juror's
21 recollection of the evidence and a juror's note or between a
22 juror's recollection and that another of another juror on an
23 issue that is important to your decision, you may request that
24 the reporter read back the relevant testimony, which must
25 prevail. Sometimes there is a tendency on the part of juries

1 immediately to request that the testimony of every witness be
2 read back or that all of the testimony of a particular witness
3 on every subject be read. As you can see, Ms. Seijas is taking
4 down everything that we say while we are on the record. I am
5 advised that she does have a life, though, and she doesn't take
6 this home every night and prepare it into a transcript that
7 could be given to you. So if you ask for something to be read
8 back, she has to go through all of her notes, find what you ask
9 for, take out any objections or sidebar conferences we may have,
10 and she only reads back the testimony that was actually heard
11 back in court. As I said, she is terrific, but it does take a
12 lot of time to do that even though computers speed things up.
13 If there is any disagreement among you as to specific testimony,
14 we will try to comply with your request, but please don't ask
15 for testimony to be read if it's not necessary for your
16 decision.

17 You will be permitted to separate at recesses. You
18 must return following the recesses at such times as I instruct
19 you.

20 During recesses, you must not discuss with anyone any
21 subject connected with this trial. Not anyone at home, at work,
22 or even among yourselves. When you are sitting together in the
23 hall or the jury room or at lunch, you must speak only of
24 matters entirely unrelated to the trial.

25 You are also ordered not to have any conversation at

1 all with the attorneys, the interpreters, the parties or any
2 witness called in this proceeding. This means that when you see
3 any of these people in the hall or anywhere else, you are not to
4 greet them, don't ask for directions to anywhere, don't ask for
5 a good place to eat. Don't ask how much longer this trial is
6 going to take. There should be no conversation of any kind.

7 Now, you probably won't know who the witnesses are so
8 it's best not to talk to anyone who isn't wearing a juror's
9 badge. And please wear your juror's badge where everyone can
10 see it so no one accidentally talks to you.

11 If you're in the hall or restroom and you hear someone
12 talking about the case, please ask them not to talk about it in
13 your presence or simply walk away. No one will be offended if
14 you ignore them, and please don't be offended if they ignore you
15 because they're also under orders not to speak to you.

16 If any of these people try to speak to you, tell them
17 you will not speak to them. Then immediately inform the bailiff
18 or Mr. Pierson or Ms. Silence of this conduct. Don't be
19 concerned, however, if you see witnesses talking to each other
20 or to the attorneys. That is permissible. Please just stay far
21 enough away from them that you won't overhear any of their
22 conversation.

23 I have just read all that stuff to you and I could see
24 that you were listening but it's really important. One of my
25 colleagues was three weeks into a four-week trial not too long

1 ago and the jurors were out in the hall discussing the case and
2 she had had to send them all home and start all over again. So
3 this is really a legal requirement that we must ask you to
4 comply with, as hard as it might be.

5 During the course of the trial and before you begin
6 your deliberations, you must keep an open mind on this case and
7 all the issues that you will be asked to decide. In other
8 words, you must not form or express any opinion on the case
9 until the matter is finally submitted to you.

10 If you need to communicate with me at any time, just
11 give a signed note to the bailiff, if we have one, or
12 Mr. Pierson or Ms. Silence. And by the way, as you may know,
13 all of our courtrooms are public courtrooms. People sometimes
14 like to come and watch trials. Apparently we have quite a few
15 people who wanted to come and watch this one.

16 They may be from some of our offices here and want to
17 watch and see what kind of work lawyers actually do. They could
18 be members of the public. There are some people that generally
19 are referred to as court watchers. They just like to come and
20 watch trials, and this is a good place to do that. It's
21 perfectly all right.

22 You shouldn't let it distract you if people come in
23 and out. Also, sometimes my law clerks come in and watch, but I
24 see their table is occupied over there so they may just come in
25 the other door.

1 Please be sure, though, that none of your friends or
2 relatives are present in the courtroom unless we know about it.
3 They are certainly welcome but it's particularly important that
4 you don't hear from them anything that happened during those
5 times when the jury is not in the courtroom and also that you do
6 not discuss with them what happened when you were present. If
7 at any time you see a friend or relative come into the
8 courtroom, you should be sure to send a note to me, again
9 through Ms. Pierson, Ms. Silence or a bailiff, if we have one at
10 that time, as soon as you can.

11 As for our alternate juror, you are also bound by all
12 of these admonitions. You must not talk to anyone about any
13 subject connected with this trial and you must not form or
14 express any opinion on it until the case is submitted to you,
15 which means until such time as you are substituted in for one of
16 the 12 jurors and begin deliberating on the case.

17 I am going to order you all to stay healthy because as
18 you've noticed we have already had one alternate substituted in
19 as a regular juror. You're the only alternate for a four-week
20 trial. So everybody just hang in there with me. I'd appreciate
21 it. And, sir, that means you must not decide how you would vote
22 if you were deliberating with the other jurors and not form or
23 express an opinion about the case unless you have been
24 substituted in.

25 That's enough from me. The next phase of the trial

1 will now begin. First, each side will make an opening
2 statement. Then the Government will present evidence and the
3 Defense may cross-examine the witnesses called by the
4 Government. Then the defendant may present evidence and the
5 Government may cross-examine those witnesses.

6 Witnesses don't necessarily testify about things in
7 the order in which they happened. Sometimes I will allow
8 witnesses to testify out of order to accommodate their
9 schedules, so you should be sure to keep an open mind until you
10 have heard all the evidence. After the evidence has been
11 presented, I will instruct you on the law that applies to the
12 case and the attorneys will make their closing arguments. Then
13 you will begin your deliberation by going into the jury room to
14 deliberate on your verdict.

15 At this time the lawyers will be permitted to make an
16 opening statement, if they choose to do so. Neither side is
17 required to make an opening statement. An opening statement is
18 not evidence. It is also not an argument. Counsel are not
19 permitted to argue the case at this point in the proceedings.
20 An opening statement is simply an outline by counsel of what he
21 or she expects the evidence will show in this trial. Its
22 purpose is to assist you in understanding the case as it's
23 presented to you.

24 Would the Government like to make an opening
25 statement?

1 MS. DONAHUE: Yes, please, Your Honor.

2 Government's Opening Statement

3 MS. DONAHUE: Thank you, Your Honor. Good morning,
4 ladies and gentlemen of the jury.

5 Your Honor, could I ask if we could move this screen?
6 I can't see one of the jurors.

7 THE COURT: If you want to get somebody to move it,
8 you certainly may. You break it, you pay for it.

9 MS. DONAHUE: That's a deal.

10 Thank you.

11 Good morning, ladies and gentlemen. The evidence at
12 this trial is going to show that that man, the defendant,
13 Michael Pepe, tied up, drugged, beat, gagged, and then raped
14 little girls. More than once and to more than one girl.

15 He committed these acts not here in California, not
16 here in the United States, but in the country of Cambodia.

17 Now, the defendant is a United States citizen. He was
18 born in the United States. It is against the law for a
19 United States citizen to go to another country and rape little
20 children. It is against the law for a United States citizen to
21 go to another country and require little girls to perform oral
22 sex on him for money.

23 In September of 2005, the defendant traveled from
24 Los Angeles to Cambodia. Cambodia is located in Southeast Asia,
25 and it is literally halfway around the world from Los Angeles.

1 He flew 7,000 miles to Manila and the Philippines,
2 changed planes twice and landed in Phnom Penh. Phnom Penh is a
3 city. Phnom Penh is the capital of Cambodia.

4 Defendant was not traveling to Cambodia on business.
5 He didn't go and rent a hotel room. He was renting a house. A
6 house in Phnom Penh surrounded by a wall and a gate.

7 The house that defendant chose to rent was located
8 right around the corner from an elementary school. You will
9 hear about it. The Newton Thilay schools.

10 Defendant's house had two stories. The living room,
11 the dining room, the kitchen and one bedroom were on the first
12 floor. His bedroom, the defendant's bedroom, was on the second
13 floor. There was another bedroom on the second floor. Inside
14 this bedroom was a bed. On the bed there were flowered sheets
15 and stuffed animals and there were clothes inside the closets.
16 Little girls clothes, pants, shirts, skirts, robes, and school
17 uniforms.

18 The defendant does not have young children, but the
19 evidence will show that the defendant did not live alone in this
20 house. He lived there with other people's children. He lived
21 there with the victims in this case and you will meet them.

22 I will refer to them by their first name. I.T., who
23 was between 11 and 12 years old at the time she was in
24 defendant's house.

25 L.K.xxx, who was between 12 and 13 years old.

1 S.R.xxx, who was 10 years old at the time that she was
2 at defendant's house.

3 S.S.xxx. She is S.R.xxx's sister. She is about a
4 year older than S.R.xxx.

5 K.S.x. if you focus, you can see. That's K.S.x.

6 That is a photograph taken inside of defendant's house
7 in Phnom Penh. This little girl's name is NTDx. It's
8 pronounced "NTD." She was between 13 and 14 years old.

9 And finally, T.C.xx. T.C.xx was between 13 and 14
10 years old.

11 All of these girls are Cambodian or Vietnamese and
12 they all come from very poor families.

13 At the time they had very little education. Even
14 though, as you can see, they are between the ages of 10 and 14,
15 most of them had only reached the first or second grade in
16 school, if they had been to school at all. And the girls who
17 come to court to testify will tell you they were brought to the
18 defendant's house. Several of them will tell you they were
19 brought to the house by a woman whose name is Basang. And that
20 she arranged to have them brought from their homes to the
21 defendant's house. And the defendant provided them with a nice
22 place to live. A very nice place to live by comparison to the
23 slums where their families lived.

24 And the defendant gave them food. He gave them
25 clothes. And for some, he gave them an education.

1 As I said, the defendant gave them a nice place to
2 live. L.K.xxx, who was one of the victims that you will meet,
3 lived in this house in Cambodia with her family. And a woman
4 named Basang had her brought from her house to the defendant's
5 house.

6 Defendant gave them food, he gave them clothes and for
7 some of them he gave them an education, he sent them to that
8 school that was right around the corner from his house. On top
9 of all of that, defendant gave them money, a dollar, sometimes
10 maybe a little bit more, and he would give money to some of
11 their parents.

12 But there was a price. There was a price for all of
13 this. The parents did not pay that price. The girls did. And
14 that price was sex.

15 One of the requirements for living at defendant's
16 house was giving defendant sexual massages. The girls who would
17 go to school would come home from school but instead of maybe
18 grabbing a snack, playing with their friends or doing their
19 homework, the girls were required to go to defendant's bedroom
20 or upstairs to his massage table and they were required to take
21 off all of their clothes. And he would take all of his clothes
22 and he would lay on the bed or on the massage table on his back
23 naked and the little girls were required to stand around him and
24 to rub him, to massage him with oil, to massage his penis and to
25 perform oral sex on him until he ejaculated on them. Several of

1 them will tell you it made them throw up.

2 But this was the price they had to pay to be in this
3 house. And that's not all that the defendant required. From
4 some of the girls he required more than oral sex. And you will
5 hear from several of them about what the defendant did to them
6 in his bedroom. They will tell you that he tied them up. That
7 he used cloth strips and rope. That he would bind their wrists
8 and their ankles or he would tie them to the bed.

9 They will tell you that he gave them something or he
10 had Basang give them something that made them feel groggy. They
11 would swallow a pill. They were required to swallow a pill and
12 they felt drowsy. If they screamed in pain, he stuffed a towel
13 into their mouth. Sometimes he hit them. And you will hear
14 that he raped them. They will tell you he penetrated them with
15 his penis. Some of them will tell you that at least the first
16 time they passed out.

17 When they woke up, they were in great pain, some of
18 them lying in a pool of blood. And this happened more than once
19 to more than one girl.

20 One of those girls was I.T.. she is the girl in the
21 lower right-hand corner. At the time I.T. was about four feet
22 tall and she weighed about 60 pounds. He bound her, he
23 blindfolded her, he gagged her. And he raped her.

24 I.T. fought back. And he didn't like that. So he
25 kicked her out of his house. But I.T. did not just disappear

1 back into the slums of Phnom Penh. I.T. came to the attention
2 of law enforcement in Cambodia and on June 17th of 2006, the
3 Cambodian National Police went to defendant's house with a
4 search warrant. And you will hear what they found at the
5 defendant's house.

6 In his bedroom, inside his closet, they found
7 essentially his rape kit. They found a plastic bag with rope
8 and masking tape.

9 Besides the bag, they found long strips of cloth with
10 slip knots tied at the end. On the other closet shelves they
11 found Viagra; Kamagra, which is the foreign equivalent of
12 Viagra; Rohypnol, the date rape drug; plus a number of other
13 drugs that you will hear have the effect -- will have a sedative
14 effect when given to a child; baby oil for the massages; KY
15 jelly; condoms, and children's books and work books. And all
16 the little girls' clothes.

17 And articles cut out from Phnom Penh newspapers about
18 men who travel to Cambodia and have sex with children and get
19 caught.

20 The Cambodian National Police also found computer
21 media in the office in defendant's house. One of the victims in
22 this case, L.K.xxx, was actually at the defendant's compound at
23 the time of the search and you will hear her testify and she
24 will tell you what the defendant did to her in his bedroom. She
25 will also tell you that he took naked pictures of her, pictures

1 of her naked. And you will hear from computer experts who took
2 a look at the computer media that came out of the defendant's
3 office, and you will hear that they found a photograph of the
4 defendant naked, standing next to L.K.xxx, naked in his bedroom.

5 You will see photographs of defendant's bedroom and
6 his bed, both in the photographs of L.K.xxx with the defendant,
7 L.K.xxx who was 12 to 13 years old at the time, and in the
8 photographs that were taken by law enforcement during the
9 search. As I said, the search was done by the Cambodian
10 National Police but there were representatives from American law
11 enforcement at that search because, as I said, he is a
12 United States citizen and as a U.S. citizen, he is bound by our
13 laws.

14 One of those representatives from the United States
15 law enforcement was Gary Phillips. He is a special agent with
16 the United States Immigration and Customs Enforcement, and he is
17 assigned to work in Southeast Asia.

18 He took photographs during the search of the house,
19 photographs of the bedroom, the defendant's bedroom, photographs
20 of the girls' bedroom, and you will see those photos. And you
21 will see the physical evidence that was seized. The Viagra, the
22 Rohypnol, the sedatives that the girls were forced to take, the
23 baby oil that they were forced to use to massage the defendant.
24 You will see photographs of the massage table.

25 We have the rope, we have the cloth strip that the

1 defendant used to tie them up. The things that the girls
2 described, law enforcement found in his house in his bedroom.

3 You will also hear that the girls were examined by a
4 doctor. The girls who said that the defendant had penetrated
5 them with his penis in fact had vaginal injuries consistent with
6 forced penetration. Girls of this age having no hymen visible
7 at all. Medical evidence showing that obviously these girls had
8 been penetrated. That's for the girls who had been raped.

9 And, ladies and gentlemen, you will see and hear from
10 some of these girls yourselves and you are going to see how very
11 difficult it is for them to talk about what he did to them, how
12 very difficult it is for children --

13 MR. GUNN: Objection, Your Honor. This is
14 argumentative.

15 THE COURT: Ms. Donahue.

16 MS. DONAHUE: You will hear from the girls that the
17 defendant built a relationship with some of these victims. And
18 Jim Clemente, who is an FBI agent who has some expertise on
19 child victims of sexual crimes, is going to testify and he is
20 going to explain a concept that is strange to a lot of us and
21 it's a concept known as grooming. And grooming is a way that an
22 adult who has a sexual interest in a child acquires access to
23 that child and maintains access to that child over a period of
24 time for sexual purposes.

25 And he will talk to you about how grooming is behavior

1 that can appear to be very innocent. In fact, it's behavior
2 that can appear to be very altruistic. Sending a child to
3 school, buying clothes for a child, buying stuffed animals for a
4 child, those are behaviors that obviously can be motivated by
5 very good intentions. But grooming does not arise from any good
6 intention at all. Grooming has only one goal and that goal is
7 to gain access to a child for sexual purposes.

8 Now, the victims in this case lived in the defendant's
9 compound for varying periods of time. Some for a short period
10 of time, a week or two, and some for many months. And you are
11 going to see photographs of the victims that -- at his house.
12 Photographs of the victims wearing clothes bought with his
13 money, holding stuffed animals bought with his money.

14 In some of the photographs, the victims are smiling.
15 In some of the photographs, they are not. And you will learn
16 that, as I said, not all of the victims were required to stay in
17 this house 24 hours a day. Some of the girls were -- would
18 leave, walk around the corner to the school, and come back. The
19 defendant also allowed some of the girls to go and visit their
20 parents. Maybe for the weekend, go and visit the same parents
21 who brought these girls from the slums to this house. And at
22 the end of the weekend or at the end of the visit, the girls
23 would be brought back from the slums to this house.

24 Now, as I said earlier, I.T. fought back. She got
25 out. Some of the others you will hear -- you will hear from

1 them, at least initially did not fight back. And you are going
2 to hear from an expert, Dr. Wendy Freed, she has a lot of
3 experience working with victims of sexual abuse, particularly
4 victims from Southeast Asia, from Cambodia, and she is going to
5 talk to you in general about reasons why victims don't always
6 fight back. She will explain how sometimes shame, loss of value
7 within your own society, feelings of duty, loyalty to family,
8 all sometimes work together to keep a victim compliant.

9 The girls will come in, they will tell you what he did
10 to them. You will see their shame and you will hear their pain.
11 And after you have heard from the victims and after you have
12 heard and seen all of the evidence, we are going to have an
13 opportunity to talk with you again and at that time, we are
14 going to ask that you return verdicts of guilty on all counts of
15 the Indictment for what he did to them. Thank you.

16 THE COURT: Thank you.

17 Mr. Gunn, would you like to give an opening statement?

18 MR. GUNN: Yes, Your Honor. May I inquire as to
19 whether we have the ELMO working now?

20 THE COURT: Apparently we do.

21 MR. GUNN: It looks like we do. Thank you. Miracles
22 of technology.

23 Defense Opening Statement

24 MR. GUNN: Ladies and gentlemen, I would like to talk
25 about some other photos you are going to see. They were taken

1 on June 12th, 2006, just five days before Mr. Pepe was arrested
2 and six months after he had supposedly been abusing all these
3 girls, including three girls who were living in his house for
4 those six months.

5 The photographs are of a birthday party at Mr. Pepe's
6 house. It wasn't a birthday party for him. It wasn't a
7 birthday party for any other adults. It was a birthday party
8 for one of the girls who was living there. The girl named
9 L.K.xxx. And you will see photographs. You will see her
10 looking very happy, along with the other girls who are living at
11 the house at the time. You will see photographs like that.
12 That's L.K.xxx's mother standing in the middle of the pictures,
13 S.R.xxx playing around, putting cake on her face, one of the
14 other girls sitting at the table with cake on her face and
15 L.K.xxx in the corner. Actually, that's L.K.xxx's mother
16 standing next to L.K.xxx already with cake on her face.

17 You will see that L.K.xxx has a pointed birthday hat
18 at this party and she's smiling. And this is after Mr. Pepe
19 supposedly had been abusing her for six months, not the first
20 day she was there or something like that.

21 You will see she has a cake with candles being
22 presented to her by her mother. You will see she is opening
23 gifts and smiling.

24 This is the girls at the house and their mother just
25 five days after this had supposedly being going on for a long

1 time.

2 You will also see other photos of the girls who are
3 saying Mr. Pepe abused them at the house. You will see those
4 photos show them smiling, playing around, getting ready to go
5 off to school in their school uniforms.

6 Then you will hear testimony from witnesses who had
7 contact with the girls while they were living in Mr. Pepe's
8 house. You will hear that L.K.xxx's mother actually lived at
9 the house for three months working there before she left because
10 she and Mr. Pepe had a disagreement about how she was doing.
11 And it's not like L.K.xxx is going to be saying that this just
12 started after her mother left. L.K.xxx is going to claim this
13 started right away almost. But L.K.xxx's mother was living
14 there for three months, and you will see a videotaped deposition
15 of her that was taken in Cambodia. She will tell you that
16 nothing was ever said to her by L.K.xxx. She will tell you that
17 L.K.xxx didn't act like she was being abused. One of the things
18 she will tell you, when she left, she said to L.K.xxx so why
19 don't you come with me. And L.K.xxx said no, I want to stay so
20 I can keep going to school.

21 You will also hear from the mother of the two other
22 girls who lived at that house for that long period of time and
23 went to school. S.R.xxx and S.S.xxx. And their mother didn't
24 live at the house but she visited frequently and they went home
25 to see her almost every weekend. Maybe an exception here and

1 there but most weekends they went home for the weekend and they
2 acted perfectly normal. They acted fine.

3 You will also hear from a teacher from the school and
4 you will not just hear about him seeing the girls at school, you
5 will hear about how he came over to the house on a regular basis
6 for several months tutoring the girls in English. So he saw
7 them like two or three times a week for an hour or two while he
8 was tutoring them. And he will say that they acted perfectly
9 happy. And you will hear him say that they even acted
10 affectionate toward Mr. Pepe.

11 Now, you are going to hear this supposed expert,
12 Dr. Freed, testify about how and why girls might not say
13 anything, and it will be up to you to evaluate that and decide
14 whether you accept that and whether it fits this case. She's
15 definitely someone who has an agenda and a focus on working with
16 Cambodian girls. But one of the things even she will say is
17 that while the girls may not always say something about this
18 type of abuse, they're not walking around seeming happy. They
19 tend to be fairly sad and withdrawn. So they may not
20 affirmatively say anything, but they're not acting like
21 nothing's wrong. Especially, I would say, not when they're not
22 with the supposed abuser, when, say, they're home with their
23 parents, when their parents are right around there.

24 And in case you think -- you will hear that Mr. Pepe
25 sent the girls to school. In case you think, well, that's just

1 his grooming thing, that's just for him to get access, you will
2 hear that he had an independent interest in education of
3 children in Cambodia. You will hear that he had a program where
4 he would go out and distribute school supplies to children. And
5 lest you think that is just some sort of sophisticated plan for
6 grooming or getting access to children, you will hear that some
7 of the places he did that in were hours away, almost all the way
8 across the country from Phnom Penh and on at least a few
9 occasions he gave the school supplies to other people to
10 distribute without him even being there.

11 You will hear this expert who will testify about this
12 grooming theory and, again, you are going to get to decide and
13 be the ones to decide whether to accept what he has to say, but
14 I'm assuming that even he will admit that just if you are nice
15 to kids and want to help kids out, that doesn't automatically
16 mean you're grooming them for sexual abuse.

17 If he does claim that it automatically means that,
18 then ladies and gentlemen, you will be the ones to decide
19 whether to accept what he says.

20 Another thing you are going to hear testimony about
21 and evidence about is the interview process these girls are
22 taken through. First they were interviewed by representatives
23 of a non-governmental organization whose main mission, if not
24 its only mission, is to rescue children it thinks are being
25 abused and make sure that people it thinks are doing the abusing

1 get punished. Then at least in some cases they were interviewed
2 by a Cambodian National Police officer. After that, they were
3 interviewed by an American law enforcement agent. Either just
4 before or just after that, they were not only examined by a
5 doctor, but interviewed by a doctor about this.

6 Then again, at least for some of them, they were
7 interviewed by a Cambodian prosecutor or a Cambodian judge,
8 because you will hear that there were charges pending in
9 Cambodia for some time before Mr. Pepe was brought here. More
10 recently they were interviewed once or twice by one or more of
11 these prosecutors, and probably mixed in throughout that, they
12 were interviewed, at least in the form of counseling, by people
13 with a non-governmental organizations that are sheltering them
14 right now.

15 Now, most of these interviews unfortunately weren't
16 videotaped. But the American agent interviews were videotaped
17 with people from the non-governmental organizations that were
18 sheltering the girls interpreting. And you will hear things in
19 those videotapes such as one of the girls describes whoever
20 abused her as having cat eyes. And the Cambodian interpreter,
21 perhaps knowing that Mr. Pepe's eyes are blue, says blue eyes.

22 You will hear the agents encouraging the children,
23 "You don't have to be afraid to tell me because our job is to
24 never let this happen again to anybody else." The adults are
25 expected to protect the children. It should never allow

1 children to be tricked into that kind of situation.

2 You will hear in one of the interviews an interpreter
3 saying to the girl in Cambodian or Vietnamese, I forget which it
4 is -- and forgive my language but I want you to hear exactly
5 what is said to the little girl -- "so you sucked his cock?
6 Speak frankly. The mister is hear to help. Other girls have
7 told the mister the true stories about this man."

8 At another point in one of the interviews, a picture
9 of Mr. Pepe is shown but I.T. says it's not the man. But the
10 interviews don't settle for that.

11 "Do you know who that is?"

12 "He is not the one."

13 "That's not the man? Daughter" -- this is the
14 interpreter, "Daughter. Look carefully. Is he the one?"

15 "No. His nose is longer."

16 Interpreter: "Have you seen this man?"

17 Other interpreter -- because they are now going from
18 English to Cambodia to Vietnamese -- "do you know this man?
19 Don't forget to look closely."

20 "No."

21 "No? Keep in mind people may change a bit."

22 Interpreter: "Think. Some people change a little
23 bit." That's the Cambodian interpreter.

24 Vietnamese interpreter: "Daughter, take time and look
25 carefully to see if this is the man. Does he look familiar

1 without the mustache?"

2 The NGO's and law enforcement had their minds made up
3 and they wanted to get the answers that they needed. Convict
4 someone they thought was guilty.

5 It's not necessarily that these girls are evil,
6 malicious people setting up Mr. Pepe. Maybe they were abused.
7 There is medical evidence in the case of several of them. But
8 they weren't abused by Mr. Pepe.

9 You will hear some additional testimony in a
10 deposition of this woman named Basang. She is a prostitute that
11 Mr. Pepe knew. You will hear that she had access to Mr. Pepe's
12 house whenever she wanted. Including when he wasn't even there.
13 She had a key. And you will hear that she took other men there,
14 including a boyfriend named David who was jealous of Mr. Pepe,
15 she says.

16 And you know this photo of Mr. Pepe standing naked
17 with L.K.xxx. You are going to see that photo. You will hear
18 where it was found in the computer materials that were found in
19 Mr. Pepe's house. Now, I think what the Government wants you to
20 think or people want you to think is well that photo was taken
21 so he could then look at it. Well, you will hear where it was
22 found in the computer material. It wasn't found in one of the
23 photo program albums where a person would normally keep photos
24 that they wanted to look at. It was found in places where you
25 wouldn't keep stuff you wanted to look at. Or stuff that

1 someone else had taken that they didn't want you to see.

2 They were in these tinny little thumbnail images that
3 the photo software program automatically creates and sort of
4 puts in this other directory or folder in the computer that
5 isn't accessed by the actual photo software itself. And on the
6 CD -- they were found on one of these portable CD's that we
7 stick in the side of computers, for those of you who are
8 partially computer literate, like me, but not very. It was
9 found in what's called the unallocated space. That's where
10 things go when they are deleted from the CD. That's where
11 things go where, for example, when someone who doesn't live in
12 the house took the photograph, put it on a CD to transfer it to
13 something else and then deleted it so no one else would see it.

14 And the only way you can see photos on that deleted
15 space on the CD is by having some special forensic recovery
16 software that these computer experts use that the average person
17 doesn't have.

18 And the other place these were found was in what's
19 called the recycle. I don't know how many of you know the
20 recycle on a computer but that's where photographs go when they
21 are deleted. Until you empty the recycle bin, I think the term
22 is called, you can go back and look at them but it's not the
23 place that you keep things that you have to look at.

24 You are going to see how Mr. Pepe looks in this photo.
25 He looks, the way I put it, totally zoned out. He looks like he

1 doesn't even really know what's going on.

2 So that's -- I was about to say all the evidence,
3 ladies and gentlemen, it's not all of the evidence but it's more
4 of the evidence. It's not quite as simple as the prosecutor
5 wants to make it sound.

6 These are horrible charges. They are the kind of
7 charges where if someone is guilty of them, you want to convict
8 them and see them punished. They are also the kind of charges
9 where if someone is not guilty and you are not convinced beyond
10 a reasonable doubt, you don't want to see someone convicted and
11 branded with this. And at the end of this case, we are going to
12 come back to you and we are going to ask you to return a verdict
13 of not guilty. Thank you very much for listening to me.

14 THE COURT: Thank you. Ladies and gentlemen, we will
15 take a 15 minute break. Don't talk about the case or form or
16 express any opinions about the case until it's finally submitted
17 to you.

18 Pam, do you want to show the jurors our jury room.
19 And that's where you will be waiting at your breaks. And later
20 we will show you how to get in there in the morning so you don't
21 have to be waiting out in the hall.

22 (Recess taken)

23 (Jury In)

24 THE COURT: Is the Government ready to proceed?

25 MR. LULEJIAN: Yes, Your Honor.

1 THE COURT: You may call your first witness.

2 MR. LULEJIAN: Your Honor, the United States of
3 America calls Laura Watson.

4 Laura Watson, M.D., Government's witness, was sworn

5 THE CLERK: Thank you very much. Please be seated.
6 Please state your full name for the record and spell your last
7 name.

8 THE WITNESS: I am Dr. Laura Watson, W-A-T-S-O-N.

9 THE COURT: You need to speak into the microphone so
10 we can all hear you.

11 THE WITNESS: Dr. Laura Watson, W-A-T-S-O-N.

12 THE COURT: You may proceed.

13 DIRECT EXAMINATION

14 BY MR. LULEJIAN:

15 Q. Good morning, Doctor.

16 A. Good morning.

17 Q. What is your occupation?

18 A. I am a medical doctor.

19 Q. Where do you practice medicine?

20 A. At the International SOS clinic in Phnom Penh, Cambodia.

21 Q. And where are you licensed to practice medicine?

22 A. With the General Medical Counsel in the UK.

23 Q. And when you say UK, what do you mean?

24 A. Great Britain.

25 Q. How long have you held a license to practice medicine in

1 Great Britain?

2 A. Since 1996.

3 Q. And what medical college did you attend?

4 A. Southampton Medical School in England.

5 Q. What is your specialty?

6 A. I am a specialist in general practice or family medicine.

7 Q. What is general practice?

8 A. General practice is -- it's like family medicine in the
9 U.S. It's a little different in the UK. When a child is sick
10 or there is a medical problem, you don't have immediate access
11 to a specialist, so a GP in England would see a lot of children
12 as the bulk of their work.

13 Q. When you say GP, what do you mean?

14 A. A general practitioner, sorry.

15 Q. From a general practitioner's point of view, what is the
16 result of being the first person who screens these patients?

17 A. You would make a general assessment and then you would
18 manage it as far as you could. For very serious things you
19 would refer the patient on to a specialist.

20 Q. And what category, if any, of patients would a general
21 practitioner in the United Kingdom most frequently see?

22 A. The bulk of the GP's work in the UK would be children, as
23 well as adults and the elderly.

24 Q. What did your general practice training involved?

25 A. General practice training involved a two-year rotation in

1 hospital medicine. That would include pediatrics, obstetrics
2 and gynecology, psychiatry and emergency medicine. Following
3 that you spend a year in a general practice clinic in the
4 community.

5 Q. What other medical experience do you have?

6 A. I also have a diploma in tropical medicine and I spent an
7 year in Laos in Southeast Asia working in the pediatric
8 hospital.

9 Q. When you say diploma, what do you mean?

10 A. A diploma is postgraduate qualification.

11 Q. And what other diplomas do you have, if any?

12 A. I also have a diploma in obstetrics and gynecology, a
13 diploma in child health, and a diploma in family planning.

14 Q. After you completed your general practice training, where
15 did you practice?

16 A. I then moved to Phnom Penh and Cambodia and practiced at
17 the International SOS Clinic.

18 Q. During your 12 years of practice, approximately how many
19 children do you believe you have examined?

20 A. Thousands. Thousands of children.

21 MR. LULEJIAN: Your Honor, the United States moves
22 that Dr. Laura Watson be declared as an expert in the field of
23 general practice and family medicine.

24 THE COURT: Any objection?

25 MR. BROWN: No objection, Your Honor.

1 THE COURT: All right. She is an expert in that
2 field.

3 BY MR. LULEJIAN:

4 Q. Dr. Watson, how did you become involved in this case?

5 A. I was asked by my clinic manager, Brian Ritchie, if I would
6 see some girls that were suspected of sexual abuse.

7 Q. And what were you asked to do?

8 A. I was asked to see the children, take a history, make an
9 assessment and perform any tests or treatment that I thought
10 they needed.

11 Q. During the course of that treatment, did you happen to
12 examine a girl by the name of I.T.?

13 A. Yes, I did.

14 Q. And how many times did you examine her?

15 A. I saw her twice.

16 Q. And what was the first time you examined her? When was the
17 first time you examined her?

18 A. On the 20th of June, 2006.

19 Q. And where did you examine her?

20 A. At the International SOS Clinic in Phnom Penh.

21 Q. When you first met I.T., how would you describe her
22 appearance, her general appearance and demeanor?

23 A. She was alert, she -- she had some rather defensive body
24 language. She found it very difficult to relax during the
25 consultation. I couldn't really put her at ease. She would sit

1 on the edge of her chair with her eyes kind of staring forward,
2 not really making eye contact with me. Very kind of hunched
3 over, a little bit like this.

4 Q. She was hunched over like you are demonstrating in the
5 court right now?

6 A. Correct. Yeah.

7 Q. Were you able to develop a rapport with her?

8 A. It was very difficult. Usually I can put children at ease
9 quickly. I speak a little bit of Khmer so that usually helps
10 with Cambodian children, but I.T. did not relax at all.

11 Q. What did you do after you met I.T.?

12 A. I introduced myself. I went through the usual procedure
13 that I would go through in a consultation. I took a history. I
14 explained to her what I would do and that I would talk to her
15 and then I would make an examination. Tell her not to be
16 afraid. And then once I have taken the history, I would then
17 ask her to sit on the table and perform an examination.

18 Q. And what would that examination entail?

19 A. I would ask her to remove all of her clothing and put on a
20 gown. I would then do a top-to-toe examination, and finally at
21 the end I would perform a genital examination.

22 Q. And how did you examine her genitals?

23 A. Through direct inspection with a bright light.

24 Q. What tools, if any, did you use to perform the genital
25 examination?

1 A. I didn't actually use any tools in this case. I would have
2 liked to have performed a speculum examination, but in this case
3 it was impossible.

4 Q. What is a speculum examination?

5 A. A speculum is a metal or plastic device that is used for
6 examining the inside of a vagina.

7 Q. Why didn't you use one in this case?

8 A. It was just impossible. She -- she would barely allow me
9 to examine her lying down on the table, let alone allow an
10 internal examination. It would have felt like I was assaulting
11 her to continue with an examination.

12 Q. When you say "she" and "her," who do you mean?

13 A. I.T..

14 Q. Doctor, I am going to show you a drawing that has been
15 marked as Government Exhibit No. 2042 for purposes of
16 identification.

17 What does this image depict?

18 A. This is a photograph of a normal adult female vulva or
19 female genitalia.

20 Q. And if you could describe for the Court and the members of
21 the jury, would you explain what you look for on this diagram
22 when you perform a general exam. And I am happy to point it out
23 on the screen.

24 A. So I would look for the distribution of pubic hair. I
25 would look for any bruising around the labia or the inner

1 thighs. I would look at the vaginal opening to see whether
2 there was a hymen present or not and whether there was any
3 evidence of any tears or other evidence of trauma.

4 Q. What is a hymen?

5 A. The hymen is a -- it's a piece of tissue that is mucous
6 membrane so it's like a very thin piece of skin that in a normal
7 healthy child partially covers the vaginal opening.

8 Q. So if I point to -- I think what you said --

9 A. On this picture you can't see the hymen.

10 Q. Where would it be if it was present?

11 A. It would be partially obscuring the vaginal opening.

12 Q. Is that where I am pointing right now?

13 A. Correct.

14 Q. What did you observe when you examined I.T.'s genitals?

15 A. I observed that she had an obviously disrupted hymen. She
16 had a small vaginal tear in her vaginal opening. At the left on
17 the bottom, bottom left of the vaginal opening. That's right.
18 She also had bruising around the vaginal opening and there was a
19 little bit of bleeding from the bottom edge of the vaginal tear.

20 Q. When you say bruising, I am pointing to what has been
21 marked in this picture as labia majora?

22 A. Right. Just around the base and around the inner tissues
23 and the labia minora.

24 Q. You said an obviously disrupted hymen. What did you mean
25 by that?

1 A. The hymen was visible but it looked sort of raggedy as if
2 it had been torn.

3 Q. What do these observations tell you?

4 A. These examination findings are consistent with vaginal
5 trauma.

6 Q. And what is trauma?

7 A. Trauma is damage to tissues.

8 Q. And how would vaginal tissues be damaged or subject to
9 trauma?

10 A. This kind of damage is consistent with forced penetration.

11 Q. And you base this conclusion on?

12 A. On my clinical experience as a physician and on my
13 knowledge of normal female anatomy.

14 Q. When did you next see I.T.?

15 A. I saw I.T. again on the 6th of June, 2007.

16 Q. And where was that?

17 A. At the International SOS Clinic, Phnom Penh.

18 Q. And when you met I.T. on June 6th of 2007, what did you
19 observe about her general appearance and demeanor?

20 A. Again, her behavior seemed very similar. She was -- she
21 was in -- she had the same body language. She had the same
22 staring eyes. She once again was very difficult to put at her
23 ease. She really couldn't relax during the consultation.

24 Q. What was her body position like?

25 A. The same as before. She again sitting on the edge of her

1 chair, staring forward, kind of very abnormal and frightened
2 looking.

3 Q. Where were her shoulders relative to her head?

4 A. She was hunching her shoulders forward and kind of making
5 herself as small as possible.

6 Q. And did you have a difficult time establishing rapport this
7 time?

8 A. That's correct. The same as last time.

9 Q. What kind of examination did you perform on that date?

10 A. I again performed a general physical examination and a
11 genital examination.

12 Q. And did you use a speculum --

13 A. No.

14 Q. -- when you examined the genitals?

15 A. No. I did examine her genitals but with direct inspection.

16 Q. And what did your examination reveal?

17 A. It showed that she had a wide opening to the vagina with an
18 absent hymen -- a hymen that was not visible. Excuse me.

19 Q. Did you have an opportunity to examine a girl by the name
20 of L.K.xxx?

21 A. Yes, I did.

22 Q. How many times did you examine her?

23 A. I examined her twice.

24 Q. When did you first see L.K.xxx?

25 A. On the 20th of June, 2006.

1 Q. Where was that?

2 A. At the International SOS Clinic in Phnom Penh.

3 Q. What kind of examination did you perform on L.K.xxx?

4 A. I performed a full general physical examination and a
5 genital examination.

6 Q. And how did you perform this genital examination?

7 A. Direct inspection using a bright light and also a speculum
8 examination.

9 Q. What did you observe when you examined L.K.xxx's genitals?

10 A. She had a wide, a gaping vaginal opening. She had no
11 visible hymen, and I did not see a tear.

12 Q. Doctor, you have used that term twice wide -- I'm sorry,
13 wide vaginal opening or gaping vaginal opening. What do you
14 mean by that?

15 A. Her vagina had a more -- a very open appearance, a little
16 bit like the picture that you showed earlier.

17 Q. For the record, I am putting Exhibit 2042 on the overhead
18 again.

19 A. Normally with a child I would expect to see a narrow more
20 slit-like vagina with a visible hymen. Her vagina was very wide
21 and open.

22 Q. Based on your training and experience, what did this
23 finding suggest to you?

24 A. Based on my experience, it's consistent with repeated
25 penetration.

1 Q. Why do you say repeated penetration?

2 A. Well, because if the -- if it had been recent penetration
3 in a person of this size, I would expect to see evidence of
4 recent trauma such as a tear or bleeding or ragged hymen edges.
5 The appearance of this vagina looked more like an vagina that
6 had gotten used to repeated penetration.

7 Q. Did you see scarring as well?

8 A. I did not.

9 Q. Would you see scarring as well with recent penetration?

10 A. You might see scarring.

11 Q. When did you next examine L.K.xxx?

12 A. I examined her again on the 6th of June, 2007.

13 Q. And what did you do when you saw her on that date?

14 A. I did the same as the previous time. I took a history and
15 performed a general physical examination and a genital
16 examination.

17 Q. And what did your genital examination reveal?

18 A. That she had a wide gaping vagina and no visible hymen.

19 Q. Did you examine a girl by the name of T.C.xx?

20 A. Yes, I did.

21 Q. How many times did you examine her?

22 A. Once.

23 Q. And on what date and where?

24 A. On the 6th of June, 2007 at the International SOS.

25 Q. And what kind of examination did you perform on T.C.xx?

1 A. A general physical exam and a genital examination.

2 Q. And how did you examine her genitals?

3 A. Through direct inspection and with a speculum.

4 Q. And what did you observe when you examined T.C.xx's
5 genitals?

6 A. She had a wide vaginal opening with no visible hymen.

7 There was some evidence of previous trauma with a small healed
8 tear just inside the vaginal opening.

9 Q. And what is the significance of the small healed tear?

10 A. Suggestive of previous trauma.

11 Q. To the vagina?

12 A. Correct.

13 Q. Did you have an opportunity to examine a girl by the name
14 of K.S.x?

15 A. I did.

16 Q. And how many times did you examine her?

17 A. Just once.

18 Q. And on what date and where?

19 A. On the 6th of June, 2007 at SOS clinic.

20 Q. And what did that examination entail?

21 A. General physical examination and genital examination.

22 Q. And when you examined her genitals, how did you do it?

23 A. Through direct inspection and with a speculum.

24 Q. And what did you observe when you examined K.S.x's
25 genitals?

1 A. K.S.x had -- also had a wide open vaginal opening with no
2 visible hymen. With the speculum examination, she had evidence
3 of previous trauma through -- with some splitting and healing of
4 the vaginal skin just inside the vaginal opening.

5 Q. Based on your experience and training, what is the
6 significance of that small healed -- I'm sorry -- of the
7 splitting and healing of the vaginal skin inside the opening?

8 A. That it's again suggestive of vaginal trauma.

9 Q. Did you examine a girl by the name of NTDx?

10 A. I did.

11 Q. And when did you examine her?

12 A. On the 6th of June, 2007.

13 Q. And did you go through the same type of examination
14 procedure?

15 A. Yeah. Exactly the same.

16 Q. And how did you examine her genitals?

17 A. Through direct inspection and with the speculum.

18 Q. And what did you observe when you examined NTDx's genitals?

19 A. She had a slightly inflamed vaginal opening. Also a wide
20 opening with no visible hymen.

21 MR. LULEJIAN: One moment, Your Honor.

22 Your Honor, we have no further questions at this time.

23 THE COURT: Thank you.

24 Cross-examination?

25 MR. BROWN: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. BROWN:

Q. Good morning, Dr. Watson.

A. Good morning.

Q. You testified on direct examination that you performed a general physical examination of the alleged victims in this case?

A. That's correct.

Q. Are you familiar with the term forensic examination?

A. I am.

Q. What is a forensic examination?

A. A forensic examination would be an examination -- in my view would be an examination that takes place in a law enforcement capacity and would be one that takes DNA samples, that kind of thing.

Q. When you say forensic examination, is the forensic examination undertaken when there is a possibility of suspected rape?

A. That's correct.

Q. Is a forensic examination taken when there is law enforcement involvement when a patient is brought to a hospital or clinic?

A. It may be, yes.

Q. With respect to the goals of -- did you perform a forensic examination in this case?

1 A. I performed a general physical examination and a genital
2 examination.

3 Q. At the time that you were conducting your examination, were
4 you contemplating what your findings might be used for?

5 A. At the time I was instructed to -- I was asked to do
6 whatever was necessary for these girls medically.

7 Q. And who instructed you to do that?

8 A. The NGO's, the NGO staff that came with the girls, and also
9 the law enforcement agent.

10 Q. Okay. And that's Agent Phillips?

11 A. Correct.

12 Q. With respect to your procedure, is it fair to say that one
13 of the goals was treatment?

14 A. That's correct.

15 Q. One of the goals was just to perform a general examination;
16 correct?

17 A. Yes.

18 Q. One of the goals in -- as an expert in this field, one of
19 the goals is to obtain an accurate medical history; correct?

20 A. That's correct.

21 Q. And to identify all of your physical findings?

22 A. Yeah.

23 Q. And you said on direct that you performed a top-down
24 examination; correct?

25 A. That's correct.

1 Q. So you were trying to be accurate and capture as much
2 information as you could; correct?

3 A. As far as I could.

4 Q. Is it also fair to say that one of your objectives was to
5 collect and preserve evidence?

6 A. No -- well, I'm not sure I would agree with that.

7 Q. But it's fair to say that you were attempting to document
8 as much information as you could?

9 A. That's correct. I was taking a history.

10 Q. Okay.

11 Are you familiar with the concept of a sexual assault
12 kit?

13 A. I've heard of it through my training, that's right.

14 Q. And does the -- you work at a clinic in Phnom Penh?

15 A. Yes.

16 Q. And that's the SOS Clinic?

17 A. Yes.

18 Q. Does the SOS Clinic have the ability to take DNA swabs?

19 A. We have dry swabs that can be used as cheek swabs to
20 collect DNA samples.

21 Q. Did you do that in this case?

22 A. Yes, we did.

23 Q. Is that information documented in your reports?

24 A. No, I believe it isn't.

25 Q. In terms of collecting and preserving evidence, in your

1 training and experience, have you learned that when you are
2 performing a physical examination of a suspected rape victim,
3 that it's important to take photographs of your examination and
4 your observations?

5 A. Sorry. Could you just repeat the question?

6 Q. In the course of your training and experience, have you
7 learned that it's important to take photographs of your
8 examinations and findings?

9 A. Not in the course of my training, no.

10 Q. Based on your experience, do you think it was important to
11 take a photograph of your observations for future reference?

12 A. I would not normally take photographs of children as part
13 of my general examination.

14 Q. Are you familiar with some protocol that suggests that it's
15 a good idea to take photographs of suspected injuries?

16 MR. LULEJIAN: I am going to object on the grounds
17 that this is calling for information which the -- calls for
18 facts not in evidence.

19 THE COURT: Overruled.

20 If you are familiar with that, please tell us about
21 it.

22 THE WITNESS: During my general practice training, we
23 had a day's training on forensic medicine. During that
24 training, those kinds of techniques were certainly discussed.

25 BY MR. BROWN:

1 Q. But did you not take any photographs of your observations
2 in this case?

3 A. I don't have access to that kind of equipment.

4 Q. Okay.

5 During the course of your examination, did you learn
6 that one of the girls was suspected to have been drugged?

7 A. Yes, I did.

8 Q. Did you take any blood samples or order a toxicology
9 report?

10 A. No, I did not.

11 Q. And, Dr. Watson, in terms of how you saw your role in this
12 investigation, as a medical doctor, it's your job to be
13 objective; correct?

14 A. That's correct.

15 Q. And it's your job to be neutral as much as possible;
16 correct?

17 A. My job is to be an advocate for the child that I'm taking
18 care of.

19 Q. So it wasn't -- you don't think it was your job to be
20 neutral in terms of your findings?

21 MR. LULEJIAN: I am going to object to this,
22 Your Honor, it mischaracterizes --

23 THE COURT: I don't know what that means.

24 MR. LULEJIAN: Vague and ambiguous.

25 MR. BROWN: I will rephrase it.

1 THE COURT: Thank you.

2 BY MR. BROWN:

3 Q. As a medical doctor, it's your job to observe and treat;
4 correct?

5 A. That's right.

6 Q. You're not an advocate for either side; correct?

7 A. I'm sorry, I don't really understand the question.

8 Q. Well, you just said that you feel that it's your job to be
9 an advocate?

10 A. As a child's physician, when that child is with me in the
11 room, I would be there, I am there to act in their best
12 interests as regards their health.

13 Q. With respect to their health?

14 A. That's correct.

15 Q. And you testified that the initial interview was arranged
16 at the request of Agent Phillips -- I'm sorry -- the initial
17 examination?

18 MR. LULEJIAN: Objection. Assumes facts not in
19 evidence.

20 THE COURT: It's just a question.

21 You can answer.

22 THE WITNESS: I was asked actually by my clinic
23 manager who had been contacted by Agent Phillips, that's
24 correct. It was also by request of the child's guardian who was
25 present at the time.

1 BY MR. BROWN:

2 Q. Because at the time the children were in the care of a
3 guardian of an NGO?

4 A. That's correct.

5 Q. And on June -- was it the 21st or June 20th; do you recall?

6 A. It was June 20th.

7 Q. That's 2006?

8 A. Correct.

9 Q. You interviewed four of the alleged victims; correct?

10 A. That's right.

11 Q. Okay.

12 That was S.S.xxx; right?

13 A. That was L.K.xxxxxx, I.T., S.R.xxx, and S.S.xxx.

14 Q. And then almost a year later, you conducted another
15 examination?

16 A. That's right.

17 Q. Okay.

18 And whose idea was it to conduct another examination
19 in June of 2007?

20 A. The request again came from Agent Phillips and the
21 children's guardians.

22 Q. And was that examination in anticipation of litigation in
23 this case?

24 A. I don't think I can answer that question.

25 Q. Did you find that it was unusual that a -- that you will be

1 requested to perform another examination a year after the
2 alleged incident?

3 A. Not really. I often see children repeatedly.

4 Q. But it wasn't a follow-up checkup; correct?

5 A. I was asked to do the same thing again. Was asked to make
6 an assessment, find out if the girls have any health problems,
7 conduct a full examination and make an assessment.

8 Q. Do you recall in November of 2007 being contacted by
9 Mr. Pepe's defense team?

10 A. I do.

11 Q. And do you recall the Defense team attempting to arrange an
12 interview with you or a meeting?

13 A. Yes, I do.

14 Q. And you refused to meet with the Defense team; is that
15 correct?

16 A. May I explain what happened?

17 Q. If you could just, please, answer the question, Dr. Watson.

18 A. Can you repeat the question?

19 Q. Did you refuse to meet with the Defense team?

20 A. I did.

21 Q. With respect to your examination of I.T. on June 20th, you
22 said you did a top-down examination?

23 A. Yes.

24 Q. Did you use an alternative light source to conduct that --
25 to aid in your ability to examine?

1 A. Yes, I have a lamp.

2 Q. And you -- before examining her private parts, you
3 conducted a general physical assessment; correct?

4 A. That's right.

5 Q. And you learned that there was no bruising to I.T. in terms
6 of her external -- external condition; correct?

7 A. She had bruising around her vaginal opening. She did not
8 have bruising on her torso or arms.

9 Q. You did not observe any bruising on her face?

10 A. I did not.

11 Q. You did not observe any bruising on her wrists or ankles;
12 correct?

13 A. That's correct.

14 Q. Or her torso?

15 A. That's correct.

16 Q. You learned that -- or you testified that she had a
17 disrupted hymen; correct?

18 A. Yes.

19 Q. And there was slight bleeding at the distal edge.

20 What is the distal edge?

21 A. It's the bottom edge.

22 Q. When you interviewed I.T., when you were conducting your
23 evaluation, did you attempt to ascertain the date of the alleged
24 incident?

25 A. I didn't go into a lot of detail with her over that.

1 She -- I think I have written in the report she said it was on
2 Saturday. She used the word "Saturday."

3 Q. But your examination was in late June; correct?

4 A. That's right.

5 Q. Did you attempt to ascertain a specific month that these
6 injuries were allegedly inflicted?

7 A. It can be very difficult sometimes to get children to give
8 you a precise timing.

9 Q. Did you attempt to?

10 A. What often happens with Cambodians and time, when you ask a
11 question, they'll be quite vague. They'll say oh, yes, one or
12 two weeks or one or two days. I attempted to, but I couldn't
13 get a clear, accurate answer from her.

14 Q. Did you learn from Agent Phillips when the law enforcement
15 thought that the incidents may have occurred or did you learn
16 from the NGO when they thought the incident may have occurred?

17 A. In actual fact, I did not.

18 Q. If I told that you that the alleged injuries occurred in
19 May, early May, or a month prior to your examination, would you
20 have thought it unusual to find that she was still bleeding at
21 the time of her examination? A month?

22 A. You know, vaginal skin heals very well. To have found a
23 tear with bleeding at this stage if it was a month previously
24 that the trauma had happened, it would have been -- for me this
25 would have been a reflection of very serious trauma to have

1 still been bleeding a month later.

2 Q. So in the situation where there is very serious trauma --
3 we are talking about a deep, deep injury to the vaginal wall;
4 correct?

5 A. Correct.

6 Q. When you examined I.T. the following year in June of
7 2007 -- correct?

8 A. Correct.

9 Q. You found that there were no abnormal vaginal developments.
10 You used the term, the code VAD?

11 A. NAD.

12 Q. I'm sorry. NAD. I misspoke. And what does NAD mean?

13 A. It means no abnormal detected.

14 Q. Okay.

15 So when you examined I.T. a year after the fact, you
16 observed no abnormalities; correct?

17 A. No. Because I observed that she had an absent hymen.

18 Q. Okay.

19 But in terms of you didn't observe any scars to her?

20 A. That's correct.

21 Q. You didn't -- are you familiar with the term tags?

22 A. Yes.

23 Q. What is a tag?

24 A. A tag is a small piece of skin.

25 Q. And you did not observe any tags; correct?

1 A. I did not.

2 Q. You ordered a wrist X-ray?

3 A. That's correct.

4 Q. And that was to try to ascertain her age?

5 A. Yes.

6 Q. But you did not take any photographs to document your
7 findings?

8 A. No. I don't have access to that kind of equipment.

9 Q. You talked about the absence of a hymen as a factor that
10 led you to the conclusion that there was forced vaginal trauma.

11 Is that fair to say?

12 A. Yes, that's correct.

13 Q. As an expert in this field, are you familiar with research
14 and findings that find that the absence of a hymen itself is not
15 really a determining factor as to whether there has been vaginal
16 intercourse?

17 A. I'm aware of what happens during normal puberty and with
18 normal female anatomy.

19 Q. But are you aware that there have been some findings that
20 conclude that the absence of a hymen is not determinative?

21 A. What would normally happen during puberty is under the
22 influence of estrogen, the hymen thins and gets more stretchy so
23 towards the end of puberty in some girls, the hymen is not
24 always visible.

25 Q. And is it true that some people are born without a hymen?

1 A. According to my reading, the existence of congenital
2 absence of a hymen, it doesn't exist, no.

3 Q. Is it fair to say that in addition to the absence of a
4 hymen, it's important to document or examine other physical
5 indicators that might support allegations of rape or abuse such
6 as bruising?

7 A. Yes, that's correct.

8 Q. Such as difficulty walking?

9 A. Yes, that's correct.

10 Q. Stained and torn clothing?

11 A. Yes.

12 Q. And the presence of sexually transmitted diseases is also a
13 factor; correct?

14 A. Yes, that would be correct.

15 Q. And there were no STD's in this case; right? In terms of
16 the girls that you examined? None of them had STD's?

17 A. In terms of genital examination, I did not see any evidence
18 of STD's.

19 Q. Okay.

20 With respect to L.K.xxx, you examined her also on
21 June 20th or June 21st, 2006?

22 A. June the 20th, 2006.

23 Q. And she reported to you things that she said occurred;
24 correct?

25 A. She did.

1 Q. And those were very graphic, is it fair to say?

2 A. Yes.

3 Q. She told you that she had been raped 20 or 30 times?

4 A. She did.

5 Q. She said that she had been beaten unconscious?

6 A. She did.

7 Q. She said that the last rape occurred two to three days
8 before the police arrived on June 17th.

9 A. She said it had occurred two to three days before the
10 police arrived. I was not aware of what day the police had
11 arrived.

12 Q. But it was soon before your examination; is that fair to
13 say? Within a week?

14 A. I don't actually know what day the police arrived.

15 Q. Did you learn at some point in the course of your
16 preparation when L.K.xxx was removed from the home?

17 A. I believe it was fairly soon before I saw her.

18 Q. So fairly soon before you saw her, she claimed that she had
19 recently been raped?

20 A. Yes.

21 Q. And according to L.K.xxx, she had reported bleeding in the
22 course of her -- in the course of being raped?

23 A. She reported bleeding the first time and the second time
24 that it happened. That's what she told me.

25 Q. And you performed a vaginal examination of L.K.xxx?

1 A. I did.

2 Q. And you used the bright light?

3 A. Yes.

4 Q. And you found that L.K.xxx had no vaginal tears; correct?

5 A. That's correct.

6 Q. You also did a speculum examination of L.K.xxx?

7 A. I did.

8 Q. And that's a more detailed, and for lack of a better word,
9 intrusive examination?

10 A. It's an internal examination, correct.

11 Q. When you did the speculum examination of L.K.xxx, you also
12 observed no vaginal tears; correct?

13 A. That's correct.

14 Q. You did not observe any external bruising to L.K.xxx;
15 right?

16 A. That's correct.

17 Q. Okay.

18 She had no bruises on her face.

19 A. She did not.

20 Q. She did not have any bruises on her wrists?

21 A. She did not.

22 Q. Her torso?

23 A. No.

24 Q. Or her ankles?

25 A. Correct.

1 Q. Or her inner thighs?

2 A. That's correct.

3 Q. And so the basis for your opinion that L.K.xxx -- of the
4 force -- that there had been forced penetration, was simply the
5 fact that she had a wide vaginal opening and no hymen?

6 A. Yeah. Gaping was the word I used because it wasn't just
7 wide, it was very wide.

8 Q. Okay.

9 But you didn't use the word gaping in your medical
10 report, did you?

11 A. I don't believe I did, no. But I can remember it.

12 Q. Okay.

13 But if it was gaping -- in your mind is there a
14 difference between gaping and wide?

15 A. This girl looked like she had a much more adult vagina.

16 Q. When you interviewed L.K.xxx, did you attempt to obtain her
17 sexual history?

18 A. Yes, I did.

19 Q. When you examined her the following year, you learned --
20 there were no significant -- any additional significant
21 findings; correct?

22 A. Nothing additional, correct.

23 Q. Okay.

24 Were you aware that L.K.xxx had been examined four
25 days or three days prior to your examination of her by another

1 doctor at another hospital?

2 A. No, I was not.

3 Q. Do you know Dr. Phaly?

4 A. I met her for the first time in connection with this case.

5 Q. So you did not know that she had been seen by another
6 doctor --

7 A. No, I did not.

8 Q. -- three days before your examination?

9 And you have not reviewed Dr. Phaly's findings?

10 A. I have seen one page of her medical report.

11 Q. And Dr. Phaly claims that L.K.xxx had scratches on her
12 vulva; correct?

13 A. I am not aware of that.

14 Q. But you did not observe any scratches on L.K.xxx?

15 A. I did not see any scratches.

16 Q. Again, you examined the person K.S.x; is that -- KS are her
17 initials -- on June 6th, 2007?

18 A. I'm sorry. I don't know who you mean by KS.

19 Q. K.S.x. K.S.x.

20 A. K.S.x. okay, yes, I did see K.S.x.

21 Q. And you did not document those -- your observations with
22 photographs?

23 A. No. I don't have access to photographic equipment in my
24 clinic.

25 Q. But you do have the ability to diagram in -- with a pencil

1 or a pen -- the location of specific injuries that you observed;
2 correct?

3 A. That's correct.

4 Q. So with respect to all of the alleged victims in this case,
5 you had the ability to sketch out what you say you observed?

6 A. I could have done that, that's correct.

7 Q. You did not do any sketches or diagrams as to the location
8 of the specific injuries or bruising that you saw; correct?

9 A. I made some sketches in my notes. I did not sketch the
10 location of the tears or scars that I saw.

11 Q. Again, with respect to -- and please excuse my language --
12 the alleged victim named NTDx?

13 A. Yes.

14 Q. You saw her on June 6th, 2007; correct?

15 A. That's correct.

16 Q. And you concluded that there are no -- aside from the
17 absence of a hymen, that there was no significant findings. You
18 did not observe any scars, tags or bruising; correct?

19 A. No. She had a little inflammation but there was no scars.
20 There were no scars that I saw.

21 MR. BROWN: Your Honor, I have no further questions at
22 this time.

23 THE COURT: Any redirect?

24 MR. LULEJIAN: Yes, Your Honor.

25 REDIRECT EXAMINATION

1 BY MR. LULEJIAN:

2 Q. Doctor, you stated earlier that when a child comes for an
3 examination, you speak with them first.

4 A. That's right.

5 Q. Why do you do that?

6 A. I find it puts them at ease. Children are often nervous
7 when they come to see the doctor. I usually smile, introduce
8 myself, ask them their name, how old they are.

9 Q. What else do you do besides -- in speaking with them,
10 besides getting familiar with them?

11 A. I would explain what I'm going to do and who I am, maybe
12 have a little bit of a chat. You just try to put them at ease.

13 Q. Do you take a history of the child?

14 A. Yeah. Take a full --

15 Q. Why do you that?

16 A. The history gives a lot of information that is relevant for
17 both your examination and your treatment.

18 Q. And what does that tell you with respect to how you are
19 going to treat the patient?

20 A. It allows you to form an overall opinion, not just based on
21 examination. If you take a history, you get a lot of background
22 and you can then -- it can help you to make an assessment.

23 Q. When you examined L.K.xxx, did she give you a history?

24 A. She did.

25 Q. What was her demeanor when she gave you that history?

1 A. It was very difficult for her. She was telling me the
2 story through her translator. And in some ways she was quite
3 matter of fact, but there would be long pauses as it was
4 difficult for her to tell the story.

5 Q. Let's talk a bit about that story.

6 Where was L.K.xxx -- did L.K.xxx tell you where she
7 was living prior to -- actually, did L.K.xxx tell you where she
8 was living?

9 A. She -- she had been living in a foreigner's house.

10 Q. And how did she get there?

11 A. She told me that about three months ago somebody came and
12 told her that if she went to work in a foreigner's house as a
13 cleaner, that he would give her food and pay for her to go to
14 school.

15 Q. And who was the person who brought her to the house?

16 MR. BROWN: Objection, Your Honor. Beyond the scope.
17 403 and hearsay.

18 THE COURT: Sustained.

19 BY MR. LULEJIAN:

20 Q. What was the name of the foreigner whose house she went to?

21 MR. BROWN: Same objection, Your Honor.

22 THE COURT: Sustained.

23 BY MR. LULEJIAN:

24 Q. What did she tell you she was asked to drink prior to
25 having sex?

1 MR. BROWN: Again, Your Honor. This line of
2 questioning is beyond the scope.

3 THE COURT: Is that relevant to your medical
4 diagnosis?

5 THE WITNESS: It could potentially be relevant.

6 THE COURT: Overruled.

7 THE WITNESS: She told me that she was given a powder,
8 a white powder to drink, mixed with water, and that the powder
9 made her feel sleepy and dizzy.

10 BY MR. LULEJIAN:

11 Q. What did she say happened after she felt sleepy and dizzy?

12 A. She told me that he -- the foreigner that she was living
13 with tied her up, tied her wrists and ankles together and tied
14 her ankles to her wrists and that he tried to rape her.

15 Q. What, if anything, did she say she did?

16 A. She said she struggled and then he hit her with his hands
17 until she was unconscious.

18 Q. What happened when she woke up?

19 A. She told me that when she woke up, she was sore and that
20 she was bleeding from her vagina.

21 Q. Did she say anything else happened after she woke up?

22 A. She said when she woke up, that they untied her and that
23 she bled a lot.

24 Q. And how many times did she say this happened?

25 A. She said it happened to her two or three times a week. She

1 said the second time that this happened, that she was raped,
2 that she was awake and tied in the same way.

3 Q. Did she say whether she was -- what was she asked to drink
4 prior to being raped the second time?

5 A. The second time he did not give her any -- any white
6 powder. He gave her a white pill after the rape and he told her
7 that it was an antibiotic. She bled again after the second
8 time.

9 Q. Approximately how many times -- did she say whether she was
10 tied up again after that second time?

11 A. She said after that he stopped tying her up and just raped
12 her.

13 Q. Approximately how many times did she say he raped her?

14 A. She told me that she couldn't count because there were too
15 many, but maybe 20 or 30 times.

16 Q. What, if anything, did L.K.xxx say about a woman who lived
17 in the house?

18 A. She told me there was a woman who lived in the house and
19 she taught her how to --

20 MR. BROWN: Your Honor, I am going to object to this
21 line of questioning as hearsay.

22 THE COURT: Sustained.

23 BY MR. LULEJIAN:

24 Q. How old did L.K.xxx say she was?

25 A. L.K.xxx told me she was 11.

1 Q. And when did she say the last rape occurred?

2 A. She said it was about two to three days before the police
3 arrived.

4 Q. Did she tell you whether she had started menstruating?

5 A. She said she had not yet started menstruating.

6 Q. Did she say whether she had ever had sex prior -- actually
7 let me rephrase that.

8 When had she had sex prior to being raped?

9 A. I asked her some sexual history. She said she had never
10 had sex before this happened.

11 Q. Doctor, you testified earlier that the vagina, especially
12 in young people, heals fairly quickly; is that correct?

13 A. That's correct.

14 Q. And you were asked about the absence of vaginal tears when
15 you went and examined L.K.xxx.

16 A. That's right.

17 Q. Based on your training and experience, what would the
18 absence of vaginal tears in somebody that young suggest?

19 A. It would suggest certainly the possibility that this trauma
20 had happened a long time previously or several months
21 previously. That this -- the vagina has had a chance to heal.
22 The trauma had happened -- if the trauma had happened several
23 months previously, then it wouldn't necessarily surprise me not
24 to see any trauma, any bleeding or bruising still present
25 several months later.

1 Q. Would you expect to see repeated trauma so it would heal
2 and then bleed, heal and then bleed?

3 A. You might initially for the first few times, you would
4 expect to see repeated trauma but ultimately vagina skin is
5 quite stretchy and the appearance of her vagina as stretched and
6 open would be consistent with basically a vagina that had got
7 used to being penetrated.

8 Q. You said earlier that her vagina looked like that of an
9 adult. What did you mean by that?

10 A. Well, normally in a child, as I said at the beginning, you
11 would expect to see a more slit-like vagina, a narrow opening,
12 partially covered with the pale membrane of a hymen. Her vagina
13 was large and open.

14 Q. When you were in the examination room with the children,
15 what was your primary concern?

16 A. My primary concern was to make an assessment of what might
17 have happened to these children, to perform -- to come to a
18 conclusion and perform any tests or treatment that they might
19 need.

20 Q. What did you hope -- let me strike that.

21 Did you prescribe any medication to any of the
22 children?

23 A. I did. The first -- when I saw the four children the first
24 time, I gave them antibiotics to cover them for common sexually
25 transmitted diseases.

1 Q. Did you give anybody anything else?

2 A. We also performed blood tests to test for HIV and hepatitis
3 and syphilis.

4 Q. Why would you do that?

5 A. Because if they had been sexually abused, they may have
6 been exposed to some of these infections.

7 Q. I want to ask you about your examination of I.T.. Did you
8 have -- did you get her sexual history as well?

9 A. Yes, I did.

10 Q. And what was her sexual had history?

11 A. She told me that she had never had sex before.

12 Q. How old did I.T. say she was?

13 A. She told me she was 12.

14 Q. And for purposes of her medical diagnosis, what did I.T.
15 tell you about what happened to her?

16 A. She told me that she had been -- that she had been raped.

17 Q. Did she tell you what she was specifically -- what she
18 specifically had to do?

19 A. She told me that she was tied up, that her wrists and
20 ankles were tied together. That she was hit on her head, hit
21 on -- hit with the hands on her head and then she was turned
22 over on to her front and then lifted up and then raped.

23 Q. Did she say whether she was asked to do anything with her
24 mouth?

25 A. She was also -- the first few days when she got to the

1 house, she was shown how to perform oral sex.

2 Q. What, if anything, did she say about other ways she was
3 hit?

4 A. Excuse me. I just need to consult my notes.

5 That's right. She said that she was downstairs in the
6 house and that she was told to go upstairs where -- where he
7 was. She didn't want to go so the woman who was taking care of
8 the girls in the house hit her on her hands and her legs with a
9 stick.

10 Q. Did she tell you what she was -- what she ingested prior to
11 having sex or being raped?

12 A. She told me that before she was raped, she was given a
13 white tablet to swallow, and after taking this white tablet, she
14 felt sleepy and dizzy.

15 Q. The person who raped her, did she say whether or not he
16 used any protection?

17 A. She said he did not use a condom.

18 Q. Did she say whether the man who raped her did anything to
19 himself prior to the act?

20 A. She told me that he put some liquid on his penis
21 beforehand.

22 Q. How did she physically feel after being raped?

23 A. She said afterwards that she had a lot of pain and
24 bleeding.

25 Q. Did she say whether she was raped again after this first

1 time?

2 A. Yes. She said the second time she was raped was two days
3 later. That he didn't give her any medicine this time and he
4 did not tie her up but that she had a lot of pain and bleeding
5 afterwards.

6 Q. Doctor, how resilient are children to injuries?

7 A. Pretty resilient. Children heal pretty quickly.

8 Q. You were asked on cross-examination whether or not the
9 absence of a hymen indicated -- was a sole indicator of
10 virginity.

11 Do you remember that?

12 A. Yeah.

13 Q. In making your assessment, did you look at other factors
14 other than the presence of the hymen?

15 A. I did.

16 Q. And what were those other factors?

17 A. Do you mean with regard to virginity?

18 Q. I'm sorry. Let me rephrase that. To determine whether or
19 not a girl had had sex.

20 A. I'm sorry. I don't really understand the question. Can
21 you rephrase it?

22 Q. If somebody had had sex, what else would you see besides
23 the absence of a hymen?

24 A. You might see a widened vaginal opening.

25 Q. Would you see scarring or bruising?

1 A. You might if the sex had been traumatic or forceful.

2 MR. LULEJIAN: I have no further questions,
3 Your Honor.

4 THE COURT: Recross?

5 MR. BROWN: I have no further questions, Your Honor.

6 THE COURT: Thank you very much, ma'am, you're
7 excused.

8 Does the Government have another witness?

9 MR. BROWN: Your Honor, I'm sorry. With respect to
10 Dr. Watson, if we could have her subject to recall for the
11 Defense because I think it's something we discussed with
12 Government counsel prior to her testimony.

13 MR. LULEJIAN: Your Honor, our only concern is
14 Dr. Watson is returning back -- I'm sorry. We will deal with
15 this outside the presence of the jury. I apologize.

16 MR. BROWN: Very well.

17 THE COURT: All right. Discuss this later.

18 MR. GUNN: Your Honor, we may need this as an
19 impeachment witness.

20 THE COURT: All right. Stop. Sit down.

21 Does the Government have another witness?

22 MS. DONAHUE: Yes, Your Honor. We call James
23 Clemente. He should be right in.

24 MR. GUNN: Your Honor, could I consult with counsel
25 for the Government?

1 THE COURT: You may.

2 James Clemente, Government's witness, was sworn

3 THE COURT: Thank you. Be seated. Please state your
4 first and last name and spell them for the record.

5 THE WITNESS: Thank you, Your Honor. My name is James
6 Clemente, C-L-E-M-E-N-T-E.

7 DIRECT EXAMINATION

8 BY MS. DONAHUE:

9 Q. Can you tell us where you are employed.

10 A. I am employed with the FBI in the National Center for the
11 Analysis of Violent Crime in the Behavioral Analysis Unit.

12 Q. And are you a special agent?

13 A. I am a supervisory special agent with the FBI.

14 Q. And how long have you been employed with the FBI?

15 A. A little over 20 years.

16 Q. And before you joined the FBI, tell us a little bit about
17 your background.

18 A. I have a degree in chemistry and philosophy and I went to
19 law school. I became a prosecutor for the City of New York, and
20 I led the sex crimes prosecution team in the Bronx before I was
21 admitted to the FBI academy and became an FBI agent.

22 Q. And you said that you are with the National Center for the
23 Analysis of Violent Crime and the Behavioral Analysis Unit?

24 A. Yes.

25 Q. And can you tell us what that is?

1 A. Well, the National Center is an entity created by Congress
2 in -- it's housed in the FBI -- in the FBI academy, and it is an
3 entity created to study violent and sexual crimes across the
4 country and around the world.

5 The Behavioral Analysis Unit is one component of that.
6 And in the Behavioral Analysis Unit, we do criminal
7 investigative analysis and behavioral analysis related to
8 violent crimes and sexual crimes.

9 Q. And can you tell us, what is your position at the National
10 Center?

11 A. So I'm a supervisory special agent. I've been there for
12 ten years. I specialize in child sex crimes. Our unit,
13 Behavioral Analysis Unit 3 covers crimes against children, sex
14 crimes against children, child abduction and Internet-related
15 sex crimes against children and also child pornography.

16 Q. Were there any qualifications that were necessary for you
17 to obtain this -- your current position at the Behavioral
18 Analysis Unit?

19 A. Yes. Basically to get into the FBI, you have to have a
20 college degree and three years of work experience. To get into
21 the Behavioral Analysis Unit -- there's about 12,600 agents in
22 the FBI. There are 24 members of the Behavioral Analysis Unit
23 in the country.

24 The unit requires at least ten years of law
25 enforcement experience, an advanced degree, above college

1 degree, so graduate level degree, either Masters or Doctorate
2 degree. And a tremendous amount of experience working violent
3 and sexual crimes. So that's basically the requirement -- the
4 basic requirements.

5 Q. Can you just describe your experience working sexual
6 crimes.

7 A. Well, when I got into the FBI, I worked on the child sexual
8 victimization task force in New York. It's a joint task force
9 with the NYPD and the FBI. And we worked sexual and violent
10 crimes. I did that for a couple of years. I did a number of
11 undercover operations in that area and then other areas.

12 I worked other crimes as well after that. I worked
13 some white collar crimes and cold case homicides before I was --
14 came back to working sexual victimization cases and was promoted
15 to the rank of supervisor and promoted to the Behavioral
16 Analysis Unit.

17 Q. And during the course of your professional law enforcement
18 career, can you estimate the number of violent and sex crimes
19 that you have investigated?

20 A. Well, personally investigated several hundred over the
21 course of my career.

22 Q. And can you estimate how many violent and sex crimes cases
23 you have consulted on over the course of your career?

24 A. Yeah, it's in the thousands. Probably averages about 200 a
25 year for the last ten years that I have been in the Behavioral

1 Analysis Unit. We consult on cases, we do research and we do
2 training, we teach across the country and around the world.

3 Q. Is that training limited to law enforcement?

4 A. No, it isn't. We do law enforcement audiences. We also do
5 academic, universities. We do professionals in fields that
6 relate to child sexual victimization, psychologists, medical
7 doctors, defense attorneys, prosecutors.

8 Q. And have you ever been sworn in as an expert on child
9 sexual victimization in the past?

10 A. Yes, I have. I have testified about a dozen times in
11 different cases, mainly federal court, but also some state and
12 military courts.

13 MS. DONAHUE: Your Honor, I would ask that Supervisory
14 Special Agent Clemente be designated an expert in child sexual
15 victimization.

16 THE COURT: Any objection?

17 MR. BROWN: No objection, Your Honor.

18 THE COURT: All right. He will be designated as an
19 expert. Thank you, you may proceed.

20 BY MS. DONAHUE:

21 Q. Special Agent Clemente --

22 THE COURT: Or is this a good place to break? I have
23 a question from the jury. We are about five minutes from a
24 break time anyway. So do you want to go for five minutes or do
25 you want to break now?

1 MS. DONAHUE: This is actually a good time to break.

2 THE COURT: Ladies and gentlemen, don't talk about the
3 case or form or express any opinions about the case until it's
4 finally submitted to you. We will try to keep it to 15 minutes
5 but, as I said, I have another question from my jury so I am
6 going to try to deal with that, and I will get back to you as
7 soon as I can. And there is nobody here to lead you to the jury
8 room so you can find your own way, and we will call you out when
9 we are ready.

10 (Recess taken)

11 (Jury In)

12 THE COURT: Thank you for being patient. The witness
13 is back on the stand. Sir, you are still under oath.

14 Ms. Donahue?

15 MS. DONAHUE: Thank you, Your Honor.

16 Q. Special Agent Clemente, have you examined the facts of this
17 particular case?

18 A. No, I haven't.

19 Q. That being the case then, what is the purpose of your
20 testimony here today?

21 A. The purpose is as an education witness. Basically there
22 are particular factors in the behavior of sex offenders that may
23 be confusing to the average person. It's much the same as in
24 drug cases where drug dealers have particular codes and
25 procedures that they use to try to ply their trade and avoid

1 detection. It's the same with sex offenders. There are
2 particular methodologies that they use to accomplish the crimes
3 that they commit, and some of those things may be interpreted
4 differently by the general public. If you take them
5 individually, they may seem totally unrelated or innocent
6 behavior, but when you look at them together, you can see more
7 of a pattern and understand that pattern, and I'm just here to
8 explain some of those patterns.

9 Q. Over the course of your career, have you studied that
10 pattern?

11 A. Yes. I have studied those patterns over the course of my
12 investigating career and also the -- my career in the Behavioral
13 Analysis Unit on thousands of cases related to this topic.

14 Q. I would like to turn your attention to what -- the
15 PowerPoint slide that has been placed in front of you, but I
16 believe the jury -- the projector is not -- is not operating and
17 so maybe what we will do is have you turn your screen and we'll
18 just talk through it.

19 A. I don't know if this is going to help them. Is this too
20 far for you?

21 THE COURT: It would be too far for me, much less too
22 far for them.

23 MS. DONAHUE: We will make this work.

24 Q. Special Agent Clemente, have -- over the course of your
25 work with the Behavioral Analysis Unit, have you come to --

1 THE COURT: The screen is on now.

2 MS. DONAHUE: Oh, good. Thank you.

3 Q. Have you come to see a spectrum in compliance level of
4 child sex victims?

5 A. Yes. Typically, we see a range of behavior in the
6 victims -- the behavior of the victims of child sexual crimes.
7 With respect to compliance level, what I have done here is laid
8 out sort of a spectrum across which you will see on the
9 left-hand side, non-compliant and on the right-hand side,
10 compliant. And on the bottom you will see various points along
11 there defined as we move from cases where, like, in abduction
12 where there is an overwhelming amount of force used to actually
13 physically take a child and on the other -- and as we move to
14 the other end, there is less actual physical force used;
15 however, more manipulation programs and grooming is used to gain
16 compliance of a child.

17 Q. And can you please explain what you mean by the term
18 grooming?

19 A. Well, grooming is basically -- we call it a constellation
20 of behaviors, and that's really just a fancy word for a group of
21 behaviors that taken together shows that there are goals for
22 this behavior.

23 Individually, these behaviors may look very innocent
24 or, as I said earlier, unrelated to child sex crimes; however,
25 they are methods that offenders can use to get access, authority

1 and control over a child to accomplish sex crimes with that
2 child.

3 They're aimed at both the child and the parent or
4 caregiver of that child because the offender needs to get
5 access. They're also aimed at getting access for sex and also
6 to delay or prevent disclosure of that sex act.

7 Q. When you say these activities are aimed at the parent, can
8 you explain what you mean by that?

9 A. Well, when someone grooms a parent, it's typically by
10 building some sort of either personal relationship or outward
11 community relationship that shows that they're a trustworthy
12 person, somebody who is responsible, somebody who is willing to
13 help out children and so forth. They may do that by their
14 profession that they choose, maybe a teacher, for example or a
15 coach. They may do it by volunteer activities that they engage
16 in, you know, Boy Scouts or youth groups or choirs or something
17 like that. And they may do it in their free time or in their
18 personal relationships in their neighborhood.

19 But in a way what they do is -- their goal is to
20 accomplish access to children for sex, and so they use these
21 things, these jobs, hobbies, volunteer work in order to get --
22 to sort of hold themselves out as a person who is trustworthy
23 around children.

24 Q. Now, are you saying that everyone who takes a job as a
25 teacher or a coach or the other examples you gave is --

1 A. Absolutely not.

2 Q. -- doing it for this purpose?

3 A. No, not everyone. Certainly not anyone -- certainly not
4 everyone who does that does it for that purpose but what I'm
5 saying is if you look at the group of behaviors, not just taking
6 the work or volunteer work or community access to kids in
7 isolation, when you look at it together, you may see a pattern,
8 which is what I'm talking about, with respect to grooming.

9 Q. What are the grooming behaviors that you have seen that are
10 directed toward children?

11 A. Well, the easiest way to boil that down is -- is attention,
12 affection and assets.

13 Basically children are human beings and they respond
14 to these things and, in fact, children have a great need for
15 attention and affection as they are growing up. So these are
16 tools that offenders can use by providing them with the time of
17 an adult, the affection of an adult, or giving them gifts.

18 Sometimes -- and a lot of it depends. There is some
19 risk factors and so forth that we'll talk about in a little bit,
20 but the most important thing is that offenders typically will
21 look for the thing that the child most needs and is not getting.
22 And that could be not enough parental supervision, it could be
23 something to do with poverty, it could be something to do with
24 their -- their lifestyle and so forth that they're not able to
25 get. So the offenders are very adept at picking out the

1 children who are needy and then satisfying those needs. Which
2 in any other situation would be great. But if the goal of that
3 is actually to get access to a child for sex, that is part of a
4 grooming process.

5 Q. Are there -- have you based on your training and experience
6 identified any factors that seem to place some children more at
7 risk of being groomed than other children?

8 A. Sure. Lack of parental supervision, poverty, are two --
9 are two external factors.

10 The internal factors could be self-consciousness or
11 poor self-image, questioning someone's sexuality or just
12 sexuality in general. Curiosity about sex. These things are
13 internal factors that can affect someone's propensity to be
14 victimized.

15 Q. Does the relationship, if any, between the offender and the
16 victim impact grooming or the amount of grooming --

17 A. Certainly.

18 Q. -- that takes place?

19 A. Certainly. The more control and authority a person has
20 over the victim to begin with, the less the amount of grooming
21 has to take place. So, for example, in a situation where a
22 parent were to groom a child, that person already has from birth
23 the authority and access and control over the child. So the
24 grooming that they would have to initiate to accomplish a sex
25 crime against a child is probably very minimal, whereas someone

1 who is a perfect stranger in the beginning would have to build
2 sort of a relationship and build some kind of trust and use a
3 lot of those grooming techniques and -- in order to get that.

4 And then there's sort of a spectrum in between of
5 different areas. Incrementally, it goes up as you go away from
6 being parenting to a total stranger.

7 So in the middle somewhere is what we would call an
8 acquaintance offender. Someone who has some sort of passing
9 knowledge to the victim and of the victim. And they very
10 commonly use grooming to a great extent, the offenders who are
11 acquaintances use grooming to a great extent.

12 Q. And why is that?

13 A. Well, because they have to build, they have to establish
14 that relationship. Since the child is not completely under
15 their control to begin with, they would have to sort of
16 establish the ground rules. They would have to make sure that
17 the child trusted them so they could take advantage of them.
18 But also they want to make sure that the child isn't going to go
19 running back and tell what happened. So the grooming not only
20 gives them access to a child for sex but it also kind of
21 controls their behavior so that they're not going to or they are
22 least likely to actually disclose the victimization.

23 Q. And why is it that grooming reduces chances of disclosing
24 victimization?

25 A. Well, it's a number of factors. First of all, because they

1 build a relationship by giving attention and affection and
2 gifts, the child feels indebted to that person. That person is
3 satisfying a need that child has and it may be the only person
4 in the world who has taken the time, the only adult who has
5 taken the time to spend time with them, to make them feel
6 special, to make them feel like their needs are going to be
7 satisfied. So there is sort of a debt of gratitude there to
8 beginning with.

9 Also during the course of victimization, children can
10 take on the guilt for it. They take on their own blame. They
11 feel shame about it and don't want to tell anyone about what's
12 going on. They don't want anyone to find out what's going on.

13 They can also feel that they are responsible for it.
14 That something is wrong with them and that's why this is -- this
15 happened to them and, therefore, they just feel very, very bad
16 so their self-image can go down.

17 Those are some of the reasons why -- why that's the
18 case.

19 Q. Keeping your attention focused for a minute on children who
20 have been or are in the process of being groomed, you know,
21 based on your experience, are they necessary -- do they
22 necessarily appear sad?

23 A. There's a whole range of behaviors as a result of grooming
24 or victimization.

25 MR. BROWN: Your Honor, I am going to object as

1 outside the scope of his expertise.

2 THE COURT: Overruled.

3 THE WITNESS: I'm sorry. Could you repeat the
4 question again then?

5 BY MS. DONAHUE:

6 Q. Yes. Based on your experience, do children who have been
7 groomed necessarily always appear to be sad?

8 A. Quite the contrary. If they're in the process of being
9 groomed, then at this point they typically -- typically a need
10 they have is being met. There is some reason why -- the things
11 that this person is providing to them is actually satisfying
12 something and there may be -- there is a whole broad spectrum of
13 things. If they are very poor, it could be something as little
14 as a pair of sneakers. It could be just helping someone,
15 tutoring someone after school, helping coach someone in a sport.
16 It could be spending time doing activities, very simple
17 activities to very extravagant activities or extravagant gifts.
18 So it spans a spectrum of behaviors.

19 But typically during that process, they are actually
20 being -- they are actually in certain ways better off because
21 this person is paying attention to him, showing them affection.
22 They may feel that this person really cares about them or even
23 loves them.

24 Q. And turning your attention back to your compliance level
25 spectrum, after groomed, moving to the right, you have seduced?

1 A. Yes. Well, the difference between --

2 Q. Can you explain what the difference between groomed and
3 seduced and why seduced -- just explain the difference.

4 A. Yeah. They're very similar concepts, but seduced is a
5 little bit of a higher order in terms of making the child
6 believe that they're actually in love with the child. And in
7 some cases, they do, in fact, fall in love with the child. And
8 the child falls in love with an offender. But they use similar
9 tactics that adults use when they are seducing an age
10 appropriate lover. They also show them affection and give them
11 gifts and spend time with them.

12 But it's more of a -- instead of simply building a
13 relationship that is based on friendship and interaction, they
14 are actually trying to build a relationship that is based on
15 sexual love and closeness that way.

16 As -- what's important, I think, to note also -- oh,
17 we got it over here now. Great. What's important to note is
18 that at any time a child may -- an offender may start with
19 behaviors on the left side of the screen but move along that
20 continuum, that spectrum, across the board at any time. It's
21 time and circumstance dependent. So over time it may be
22 originally that the child was forced but over time because of
23 the deterioration of their self-image, because of the shame and
24 guilt they feel, because of the power of the grooming and the
25 effectiveness of satisfying a child's needs in one area while

1 taking advantage of a child's needs in another area, they -- we
2 lost it again -- they can move along that -- they can move along
3 the arrow to the right or move back and forth at different
4 times, depending on the circumstances, depending on whether --
5 because at times a child may become more difficult. At times
6 there may be more parental supervision around so more grooming
7 needs to be used. There may be times when something happens
8 that creates a -- that takes a cooperative child who has been
9 compliant and now they don't want to be compliant anymore and
10 they move back -- back along that spectrum and more force is
11 used to accomplish the sex act.

12 But as you see, all the way on the right I have child
13 initiated, and that covers situations in which children who are,
14 for example, sexualized early, they may actually -- that covers,
15 for example, child prostitutes. Child prostitutes may have been
16 pimped out by adults or even family members. They may have
17 become addicted to drugs and need a way to get money for drugs
18 and they have become prostitutes themselves without anybody else
19 initiating it.

20 So there are instances in which that occurs; however,
21 the laws are there to protect children from themselves, from
22 their decisions because children are legally incapable of
23 consenting to sexual acts at that age.

24 So it's -- it's -- it simply covers the whole spectrum
25 of behaviors from someone who is very violently physically

1 forced into a sex act to someone who actually voluntarily
2 engages in a sex act with an adult.

3 Q. And can -- does a -- can you tell from a child's outward
4 appearance like if a child is -- appears happy or appears sad,
5 is that necessarily indicative of where along this spectrum that
6 child might be, assuming the child is a victim?

7 A. It's very difficult to tell from their outward appearance
8 because the results of victimization can be also very varied.

9 Some children engage in immediate outcry. They have
10 been victimized and they immediately run and tell.

11 Typically that doesn't happen with groomed children or
12 children who are in a relationship with the offender where that
13 offender has authority and control over them typically you have
14 delayed disclosure. And during that time period, children are
15 many times trying to prevent anybody from finding out what
16 happened because of the inner turmoil, the inner guilt and shame
17 they feel about what they are going through.

18 And also one of the best grooming practices is to get
19 a child to engage in some kind of conduct that they know is
20 wrong. That they know their parents or their teachers or their
21 guardians will feel is wrong, and once you can get a child to
22 engage in that kind of behavior, then the child is much less
23 likely to disclose because they would not want to get in trouble
24 during the process of disclosure.

25 So for all those reasons, a child may hide those --

1 any outward signs that they're being victimized or being
2 groomed. And they may actually deliberately deny it if somebody
3 asks them about it because it is something again that is a very
4 difficult thing for them to deal with themselves. They're
5 developmentally immature. It's a difficult topic to discuss.

6 Q. You mentioned the term delayed disclosure.

7 A. Uh-huh.

8 Q. Can you explain what that means.

9 A. Well, typically children who are sexually victimized do not
10 self-report immediately. And as I said a minute ago, that is
11 particularly the case when you have groomed victims or victims
12 who are in relationships with the offender. If there is some
13 sort of parental/guardian type relationship. Because the people
14 that you would normally go to for help are the very people that
15 are causing the problem in that situation.

16 So we see delayed disclosure. And there has been a
17 number of studies and so forth in which, for example, in recent
18 disclosures with offenders from the Catholic church, there is an
19 average of 20 year delay between the time of victimization and
20 the time someone comes forward to report that kind of
21 victimization. And that's a long time and that's not the case
22 in every case. But many cases children will not report the
23 victimization and something outside, some outside factor
24 actually opens up information about the case and then there is
25 an investigation. And then after being interviewed, those kids

1 may disclose.

2 Of course, even after they are interviewed, we find
3 many times what we call incremental disclosure which means they
4 don't sort of climb every step of the ladder the first time
5 someone asked them questions. Many times they take a little
6 step to test the water, to see how -- what the reaction is going
7 to be, to see if they are going to be believed, to see if they
8 are going to get in troubles. And so they will tell you a
9 little bit at a time as you disclose more and as you show that
10 you are not going to blame them or bad things aren't going to
11 happen to them as a result of it.

12 Q. Now, Special Agent Clemente, does the interview process,
13 questioning about what happened to a child victim -- can that
14 affect how the victim discloses?

15 A. Certainly. Yes.

16 Q. And how is that?

17 A. Well, there is a number of factors. I mean, the age and
18 development of the child are going to be important with respect
19 to when they talk -- they're talked to.

20 The age and development at the time of victimization
21 is going to be an important factor. And the type of interview
22 format is going to be important, as well as the interview
23 protocol. And the format would basically be there is a
24 therapeutic-type interview which is someone, a psychologist or a
25 doctor who is trying to treat a child, and during the process of

1 that, a disclosure might be made.

2 There is forensic settings when a child might be
3 interviewed in the course of an investigation. And then there
4 is interrogation settings when a child might be thought to be
5 the -- the -- you know, offender in a crime. So the format is
6 different for each one. Typically in investigative settings the
7 format is a forensic interview.

8 There are protocols, a number of different protocols,
9 which are basically standards or best practices in terms of
10 interviewing children, because what we want to do is maximize
11 the amount of accurate information that we get from anyone that
12 we're interviewing, especially a child, and we want to minimize
13 any kind of contamination. So those protocols are set up to
14 give you the best possible methods of getting accurate
15 information from children.

16 Q. Is there one set protocol for a forensic interview of a
17 child victim?

18 A. No. Actually, there is a number of protocols. Many of
19 them are similar but the FBI has developed its own protocol and
20 there are other child advocacy centers that have their own
21 protocols, but there are several different schools of thought,
22 and the FBI's protocol is based on our experience in doing
23 hundreds of thousands of interviews and interrogations over the
24 decades so it may be more -- it's more forensically aimed and
25 the -- there are other protocols that are more aimed at

1 therapeutic, for example, reasons.

2 Q. You mentioned minimizing contamination. What does that
3 mean?

4 A. Well, you want to get pure information from them. You
5 don't want to lead children, you don't want to suggest to them
6 what the answer is, and you don't want to judge them. You don't
7 want to make them close down by telling them, you know, or
8 making them believe that you judge them for what they did or
9 what they were involved with or what was happening to them.

10 So contamination would be sort of changing answers or
11 making -- you know, lowering the believability of the -- those
12 answers. Or the accuracy of those answers.

13 Q. And based on your experience, if a child is asked leading
14 questions, does that necessarily mean what the child is -- that
15 nothing happened to that child?

16 A. No, it doesn't necessarily mean that. I mean, if you ask
17 leading questions, you raise the risk of contamination or
18 inaccurate or incomplete answers. But it doesn't guarantee
19 that. I mean, it's a possibility.

20 THE COURT: Does anybody want to explain what a
21 leading question is?

22 MS. DONAHUE: Thank you, Your Honor. Yes. The Court
23 has a very good question.

24 Q. What is a leading question?

25 A. A leading question, is, for example, if I was investigating

1 a bank robbery and I said to the witness, "You saw the two guys
2 leave the bank and jump into that red car, right," that would be
3 a leading question because I gave them the answer and I'm just
4 asking them to confirm it; whereas the kind of questions we like
5 to see are basically looking for a narrative answer. For
6 example, "Tell me what happened," "Would you let me know what
7 happened to you," "What happened next," and those kinds of
8 questions don't tell the witness where to go.

9 Now, if you ask a leading question, "Did you see those
10 two guys jump into the red car," certainly the witness is
11 capable of saying, "No, I didn't see two guys and I didn't see
12 any red car. I saw one guy jump into a white car." So it
13 doesn't create a negative answer but it can open up the
14 possibility of an inaccurate answer.

15 So certainly the younger the victim, the more
16 likelihood or the more suggestibility a victim can have. And
17 one of the things that we test in our protocol is whether or not
18 children, when we are interviewing them, are competent, whether
19 they understand the meaning between the truth and a lie and
20 whether they understand that this is -- we're talking about
21 serious things. We are not talking about fantasy things.

22 And we also test their suggestibility. Whether we can
23 say, "You see that blue butterfly that's flapping through the
24 room?" And they may say, "Oh, yeah, and there's a clown running
25 after him." You know, those kinds of things. We tell them --

1 we go through this in the interview and we tell them, "Okay,
2 well, that's fantasy, that's not real. What we are going to
3 talk about today is only the real things, the things that really
4 did happen." And we basically set the ground rules for that
5 interview to try to avoid those kinds of things.

6 Q. When you use the term suggestibility, can you explain what
7 that means?

8 A. Well, it's the ability to suggest an answer to the witness
9 and the witness basically adopts it as their own. So again if
10 you go back to that red car, "Did you see the red car?" Well,
11 the witness, if they're suggestible, will just say, "Oh, yeah, I
12 saw the red car," even though they didn't see the red car. That
13 would be a suggestible witness.

14 But a witness who says, "No, I didn't see it," or "I
15 saw the white -- a white car," that would be someone who would
16 avoid suggestibility.

17 So you can test a child's suggestibility during the
18 interview process by asking questions unrelated to the crime or
19 the allegations and to test their suggestibility and their
20 competency to tell the truth and understand the difference
21 between the truth and a lie.

22 Q. Does the age of a child affect how suggestible the child
23 is?

24 A. Not only the age, but their development as well. So the
25 younger and the less developed, their suggestibility is probably

1 higher, and again that should be tested. But, for example, we
2 ask our kids to engage in fantasy all the time, reading fairy
3 tales and watching television and so forth. But as you grow
4 older, as kids age, they can discern the difference between the
5 truth and a lie, fantasy and reality. It's just something that
6 you can test both in the interview and by watching them and
7 discussing things with them and watching them, you know,
8 interact in life.

9 Q. Is there any age, sort of cutoff point or a point which
10 children appear to be less suggestible?

11 A. Well, I mean certainly courts have rules on at what age you
12 can testify and become a fact witness and so forth. I think it
13 varies from state to state. But certainly, you know, when
14 you're two or three or four years old, it's pretty difficult to
15 get past that suggestibility. But once you get into school age,
16 it starts to be -- they start to develop better and step away
17 from very concrete thinking and they can actually think and
18 their vocabulary increases dramatically and the nuance that they
19 can explain and the different degrees of experiences that they
20 have had that they can talk to you about increases as age
21 increases. It's an individual thing and it really should be
22 based on that individual child.

23 But as you get closer to 10's and 12's and teens, they
24 have a much higher ability to tell you accurately and not be
25 suggestible.

1 Q. Does education level affect how suggestible a child victim
2 can be?

3 A. Well, I would say development rather than education level,
4 but education can be a factor. But someone who can't read or
5 write or do math can still distinguish between something they
6 saw and something they didn't see. So it's not an absolute
7 factor. It could be one of the things that we look at, but
8 people who are uneducated certainly can differentiate between
9 truth and lies, fact and fiction.

10 Q. Does culture affect suggestibility, in your experience?

11 A. Yeah. Well, in my experience, I have certainly seen
12 certain situations in which culture can affect -- there are
13 certain cultures that are very paternalistic, they are very
14 male-focused. And if a male adult tells a child something to
15 do, they may follow that and take it as fact.

16 There are situational issues also, you know. In a
17 particular situation a child may be told you always listen to
18 this person, always follow what they say and so forth.

19 So it can happen. I mean, it's a -- it depends on the
20 child, it depends on the situation, it depends on the culture.

21 Q. And if you have a situation where a child has been asked
22 leading questions, what do you do to follow up?

23 A. Well, the way to resolve that, to make sure that it is not
24 an issue, that the child has not been led to say inaccurate or
25 incomplete answers, is to look for corroboration. And

1 corroboration is nothing more than something that shows that
2 what they said actually happened. So you could look for that in
3 other witnesses, you could look for that in physical evidence,
4 you could look for that in forensic evidence.

5 And so if you see that the forensic, physical and
6 other witness evidence is the same, then that tends to
7 corroborate the original testimony. If you start to see
8 differences between the original testimony and the forensics or
9 other interviews, then it would tend to refute the original
10 testimony.

11 MS. DONAHUE: I have no further questions.

12 THE COURT: Cross-examination?

13 CROSS-EXAMINATION

14 BY MR. BROWN:

15 Q. Agent Clemente, good morning.

16 A. Good morning.

17 Q. I just want to talk to you a little bit about your
18 background.

19 A. Sure.

20 Q. You have a JD in law?

21 A. Yes.

22 Q. And you have a Bachelor of Science in chemistry; correct?

23 A. Yes.

24 Q. You do not have a degree in psychology?

25 A. No, I don't have a degree. I have taken graduate courses

1 and undergraduate courses in psychology.

2 Q. Do you have a degree in child psychology?

3 A. No, I don't.

4 Q. You work for the national center, the behavioral unit?

5 A. Yes. It's the National Center for the Analysis of Violent
6 Crime, the Behavioral Analysis Unit.

7 Q. And that's a law enforcement agency; correct?

8 A. It is.

9 Q. It's not an independent organization; correct?

10 A. No.

11 Q. You talked about the consultation that you did. You said
12 you did thousands of consultations?

13 A. Yes.

14 Q. And most of the time when you consult, you consult for
15 prosecutors; correct?

16 A. For investigators most of the time. I would say
17 prosecutors three or five percent of the time.

18 Q. And the terminology that you have been using today, those
19 are not psychological terminologies; correct? Those are
20 terminologies developed by the national -- the national center;
21 correct?

22 A. Well, they are used by both psychologists and law
23 enforcement. There are a number of aspects of this terminology
24 that we have developed in our unit but there are also terms that
25 have been developed by forensic psychiatrists, forensic

1 psychologists.

2 Q. Is it fair to say that most of what you testified today
3 with respect to this spectrum was developed by your colleagues
4 at the national center, referring to Ken Lanning and Park Dietz?

5 A. Yes, certainly, but Park Dietz is a forensic psychiatrist,
6 he is on our board at the national center. But he is one of
7 many experts from around the world that are on our board that
8 advise us and teach us. But it is -- the format that you see is
9 definitely -- has been developed by our unit for applications in
10 law enforcement settings.

11 Q. Okay.

12 And in terms of published studies, does the national
13 center publish these concepts for peer review or psychological
14 advanced study?

15 A. There are a number of -- for example, the -- you mentioned
16 Ken Lanning. He was my mentor at the Behavior Analysis Unit.
17 He has since retired in 2002. He published the *Child Molesters*
18 *Behavioral Analysis*. And that was -- 196,000 copies were
19 distributed to law enforcement across the country and around the
20 world. That was before they went online and since then we have
21 no idea how many more. But it has been presented in front of --
22 I've presented it and Ken has presented it in front of the
23 National -- the American Psychological Association, national and
24 international meetings, it's been presented before Congress and
25 so forth.

1 The peer review take it gets, that particular article,
2 is through law enforcement officers and prosecutors and defense
3 attorneys and treatment providers around the world.

4 There are also empirical studies on the subject of
5 grooming, for example, out of the United States, out of Canada,
6 out of the UK, that are traditionally peer-reviewed -- academic
7 peer-reviewed articles in the traditional sense.

8 Q. Now, Agent Clemente, when I am talking about the basis
9 for -- I want to ask you about the basis for this -- for your
10 opinions.

11 A. Uh-huh.

12 Q. And your -- these opinions and these conclusions are really
13 based on your -- your department's anecdotal research and
14 interviews; correct? They aren't based on general psychological
15 studies that are out there, right?

16 A. No, that's not accurate. They are based on both. I mean,
17 first of all, we -- the training we go through as behavioral
18 analysts is from psychologists and psychiatrists.
19 Dr. Park Dietz talks about forensic psychology. Dr. Hare talks
20 about psychopathy. Dr. Collin Shan from Scotland taught us
21 about neurolinguistic programming.

22 They are based on concepts that are examined
23 extensively in academic and empirical studies. They are
24 enhanced by our -- by our anecdotal work on cases and by the
25 institutional knowledge that has built up over the last 30 years

1 in our unit.

2 Q. Agent Clemente, do you recall testifying in 2003 in a case
3 in Maryland in *United States vs. Gordon Elliott Thomas*?

4 A. I believe so, yes.

5 Q. And do you recall being asked similar questions regarding
6 the basis for the opinions that have been reached by the
7 national center?

8 A. I recall there being questions -- I believe that was a
9 detention hearing and it had to do with risk assessment and that
10 was a narrow area of testimony that I was discussing back then.

11 Q. Okay. So in 2003, you testified at a detention hearing in
12 federal court?

13 A. Yes.

14 Q. Correct?

15 A. Yes.

16 Q. And you were asked some similar questions about the
17 background and bases for your opinions; correct?

18 A. Right, but limited in this -- in that hearing to detention
19 hearing issues which have to do with risk assessment and danger
20 to community. And in that particular area, it is a limited --
21 it was a limited scope.

22 Q. And do you recall being asked whether there were published
23 studies regarding the findings or the conclusions of the
24 national center?

25 A. Well, again, in the limited area of risk assessment, yes.

1 Q. And your testimony then was that there were not published
2 studies regarding those issues; correct?

3 A. Risk assessment and dangers to the community, yes.

4 Q. In terms of how you do your research, do you recall --
5 strike that.

6 In terms of how you do your research, is it fair to
7 say that you like to interview people who have already been
8 convicted of offenses to lay the groundwork for your
9 understanding?

10 A. There is certainly a number of research projects that
11 are -- that our unit has conducted over the last three decades
12 that focus solely on convicted offenders; however, there are
13 additional ones that are based on interviews. For example,
14 Dr. Able. I think that was an accident. Sorry.

15 Q. Let me just stop you there, Agent Clemente, and really if
16 you could just listen to my question.

17 A. Okay. I'm sorry.

18 Q. What I want to ask is --

19 THE COURT: Excuse me. Take that off the screen.

20 MS. DONAHUE: I will, Your Honor. I apologize. We
21 will get our technical issues resolved. I apologize.

22 THE COURT: Thank you. Mr. Brown.

23 BY MR. BROWN:

24 Q. Agent Clemente, when you testified in 2003 you told the
25 Court that the interview was the best technique to gather

1 information.

2 Do you recall that testimony?

3 A. You are giving to me out of context. You have to put it in
4 the context. Interviews are definitely a very good and -- and
5 many times the best, the most effective method of getting
6 information and, you know, if you just tell me which area that
7 you are asking about, I will be able to answer that more
8 definitively.

9 Q. Just in terms of the general principle in terms of the best
10 way to gather information and conduct analysis, the interview is
11 a superior technique in terms of reaching your opinions and
12 conclusions; correct?

13 A. It certainly is one of the main foundations of doing that,
14 yes.

15 Q. And you never interviewed Michael Pepe in this case, did
16 you?

17 A. No, absolutely not.

18 Q. And you never spoke to spoke to any of the alleged victims
19 in this case; correct?

20 A. That's correct.

21 Q. And fact in terms of how you arrive at your conclusions and
22 your opinions, you use the term reverse engineering process.

23 Do you recall that phraseology?

24 A. Well, that is in a particular area, but not one that I'm
25 testifying in today.

1 Q. Okay.

2 But in terms of the general principles that you are
3 testifying to today when you are talking about grooming and
4 you're talking about the methodology of a groomer, in terms of
5 how you render those opinions, your -- strike that.

6 Your opinions do not have a predictive quality;
7 correct? They are -- you start at the end result normally and
8 work backwards in time and analyze the conduct looking at it
9 from the perspective of a person who has already been convicted;
10 right?

11 A. Well, I think you are confusing two areas. One is when we
12 have a case where it's being investigated and they have no idea
13 who the offender is. And in that case, we look at the behavior
14 and reverse engineer back to the type of offender would
15 committed that crime. The other is a different consideration
16 altogether, and that is when we study over time the general
17 behavior of many thousands of offenders and come to conclusions
18 about that behavior. In other words, that there is a range of
19 behavior that can be exhibited.

20 So today what I'm doing is talking about that second
21 thing so that it gives the jury some background and foundation
22 about those topics that may be confusing.

23 Q. You testified on direct examination that just because a
24 person joins the Boy Scouts doesn't mean he is a child molester?

25 A. Absolutely.

1 Q. And just because a person might be altruistic towards
2 children does not mean that they're a child molester?

3 A. Of course not. Right.

4 Q. You have to look at the totality of the circumstances?

5 A. Very much -- yes.

6 Q. In terms of interview protocol, if we could talk about
7 that?

8 A. Uh-huh.

9 Q. You testified that the FBI has a standard interview
10 protocol?

11 A. Yes.

12 Q. And is that with respect to the interviewing of children
13 who are alleged victims of offenses? Is there special protocol
14 for children --

15 A. Yes, I was going to say, there are protocols for -- there
16 are protocols for interviewing adults and there are protocols
17 for interviewing children, yes.

18 Q. And one of the reasons that there is an interview protocol
19 for interviewing children is that you used this word children
20 are susceptible to contamination?

21 A. Well, all individuals are susceptible to contamination.
22 What I said is children may be susceptible, and we want to
23 minimize that by setting up a best practices protocol.

24 Q. Okay.

25 And what are some of the best -- strike that.

1 In terms of a best practice protocol, in terms of
2 interviewing children, it's better to not ask leading questions
3 if you can; correct?

4 A. That's correct.

5 Q. And in terms of a best practice, it's better to interview a
6 child in a quiet setting if you can, correct?

7 A. Yes, it is.

8 Q. With not a lot of distractions?

9 A. Correct.

10 Q. When interviewing a child, it's important to not -- to use
11 language that is child appropriate; correct? Age appropriate
12 for the child?

13 A. You want to make sure -- if what you're suggesting is --
14 you want to make sure the child understands what you're saying.

15 Q. And in terms of an interview protocol, if it's possible,
16 it's better to have less people in a room than more, if
17 possible?

18 A. Well, the -- you know, it depends on the circumstances, but
19 certainly too many would be a problem. Having -- in some
20 circumstance it's better to have more than one, or if there are
21 going to be a number of interviews conducted, it's better to
22 have it done at one time. So it depends what your facilities
23 are. It depends what your -- what you have available to you.
24 But certainly over a certain number it would be distracting.

25 Q. And why -- why is it from a developmental standpoint, if

1 you know, why is it that children -- there is a higher risk of
2 contamination in interviewing children?

3 A. Well, I think one of the -- one of the major issues is
4 developmental. Children again are -- they come into a world of
5 adults and they are taught to listen to adults and behave and so
6 forth. Respect adults, maybe.

7 So if adults are involved in a situation and they are
8 improperly led, they may be susceptible to going along with that
9 leading. It's -- it's a potential problem.

10 Q. It's a problem because children want to please sometimes
11 people who are asking them questions?

12 A. Yeah. It can be, yes.

13 Q. And if children receive either verbal or non-verbal cues
14 with respect to the kind of answers that are expected of them
15 then they tend to comply; right?

16 A. They may, but again that is all subject to testing. It's
17 all subject to is this person very susceptible -- excuse me, to
18 suggestibility or is this person not. So it's an individual
19 thing. It can happen and it may and it may not.

20 Q. Does it increase the risk of contamination if a person who
21 was asking the question asked questions like, "We know what
22 happened to you was really, really bad. Tell us what happened
23 so we can punish this man." Is that a leading question?

24 A. Well, it's a number of things. When using the technique of
25 "we know what happened" may or may not influence it. It

1 actually can happen -- it actually can be a good thing so that
2 the person, the victim or the person making the allegations or
3 the person being interviewed actually then doesn't feel, "All
4 right, well, then I don't have to worry about disclosing."

5 So that first part seems okay.

6 Can you tell me again what the second part was because
7 I want to answer this accurately.

8 Q. That's fine. Let me move on to the next question.

9 In terms of the form of a question when interviewing a
10 child, and I use the example of something like was it a red car
11 or a blue car, the color of the car is a suggestive fact;
12 correct?

13 A. Yes, it is.

14 Q. So a better question, is it fair to say, would be, "Tell us
15 what happened"?

16 A. That would be a good open-ended question.

17 Q. Versus "Tell us how he raped you." That is a leading
18 question, correct?

19 A. That would be a leading question unless it came after a
20 disclosure of rape and then it seems it wouldn't be leading.
21 You would have to put it in the context of the questioning, but
22 if it was just out of the blue, it seems like a leading
23 question.

24 Q. Okay.

25 And in terms of suggestibility, there is certain

1 factors and you indicated that culture is sometimes a factor?

2 A. It can be, yes.

3 Q. Language is sometimes a factor?

4 A. I don't -- if you're talking about -- if you're talking
5 about not speaking the same language as the victim? Is that
6 what you're saying?

7 Q. Yes.

8 A. Or use of language?

9 Q. Both. Let's talk about the first in terms of not speaking
10 the same language.

11 A. Well, there can be misunderstanding there, but I don't know
12 how -- I don't see that as a suggestibility issue.

13 Q. Have you ever seen a situation where the victim speaks, for
14 example, Vietnamese and the questioner speaks English. Okay?

15 A. Yeah, I mean . . .

16 Q. But there are two interpreters in between the questioner
17 and the alleged victim, one who speaks Vietnamese and Cambodian
18 and the other who speaks Cambodian and English. So to make a
19 complicated scenario simple, the questions are asked in English
20 to a Cambodian interpreter. The Cambodian interpreter asks the
21 Vietnamese interpreter. And the Vietnamese interpreter asks the
22 alleged victim. And then the answers work their way back up the
23 chain.

24 Does that sound like that could raises the risk of
25 contamination?

1 A. It's not the best situation certainly because I think the
2 higher risk is that you have what they commonly refer to as a
3 game of telephone going where the questions may have changed or
4 the answers may have changed. Obviously, the best thing would
5 be to have that taped or videotaped so that somebody could look
6 that over and discern whether or not the right question was
7 asked and what the actual answer that was given was.

8 But, yeah, it certainly is not -- I wouldn't choose
9 that as the best possible way to get that information.

10 Q. And in terms of -- in terms of the language, in terms of
11 the type of questioning used, if an adult is questioning a young
12 person, suspected victim, in terms of the appropriate language
13 to use while questioning, would an agent use words like, for
14 example, "oral sex" versus, you know, for lack -- excuse my
15 crudeness -- but "sucking a dick"?

16 A. Well, that -- the proper way to do that is to norm the
17 child. In other words, find out what circumstances the child
18 was in and how that child would refer to those things. And so
19 what you might -- the best possible way to do it is it find out
20 how the child refers to those things and then use those terms
21 throughout.

22 Certainly in cases of sexual victimization there are
23 instances in which children, very young children use what we
24 would consider as adults very graphic language. If that is the
25 case in a very particular case that the children are used to

1 that type of graphic language because of their victimization,
2 it's perfectly fine to use it. So you would have to give me the
3 context for that individual child before I could say yes or no.

4 Q. Okay.

5 Let me give you a hypothetical -- let me ask you one
6 other question before I go on to my hypothetical question. You
7 have an interpreter who does not work for law enforcement
8 agency. The interpreter works for a non-governmental entity
9 with a stake in the outcome of the prosecution.

10 Is that an ideal situation or would you prefer to have
11 an interpreter who works specifically for, for example, the FBI?

12 A. Well, again, you made a statement that seems kind of
13 internally inconsistent. If you're saying that the person
14 works -- he -- it's an independent interpreter as opposed to one
15 that works for the FBI; is that what you are saying?

16 Q. Yes. The interpreter does not work for the FBI. The
17 interpreter works for the shelter where the girls are being --

18 A. Okay, I see.

19 Q. -- housed?

20 A. It made it a little confusing.

21 Q. I apologize for the inartfulness of my question.

22 A. Obviously it depends on the professionalism of the
23 interpreter and their skills as an interpreter. I can't say
24 just because they work for Organization A as opposed to
25 Organization B that it would be a bad interview. But, you know,

1 certainly you want to get -- in the best of all worlds, you want
2 to get professionally trained individuals who have done this
3 kind of work before.

4 Q. Okay.

5 Now in terms of the skill and professionalism of an
6 interpreter -- and it relates to my question about language --
7 language -- you can sometimes suggest an answer to a young child
8 by the type of language used; correct?

9 A. By the type of language or the specific words? I don't --

10 Q. Specific words.

11 A. Specifically with specific words, yes.

12 Q. So we have a situation where a young girl describes her
13 vagina as a birdie. Okay?

14 A. Uh-huh.

15 Q. When the interpreter is talking about the young girl's
16 vagina, she calls it a birdie.

17 A. Okay.

18 Q. But when the interpreter is describing the alleged conduct
19 of the suspect, she does not use the more polite language to
20 describe the sexual genitalia. She uses words like dick and
21 cock. Is that -- is that somehow coding an answer?

22 A. You know, in this -- totally out of context, I can't really
23 say. I mean, I would have to look at it to see. And again, it
24 really would fall onto how exposed is that child, is that
25 particular child to that kind of language in advance.

1 If that's everyday language, it may not have any
2 effect at all.

3 Q. Let's assume for the sake of this hypothetical that it's
4 not. That the young girl uses polite words to describe her
5 private parts and the interpreter insists on using crude, vulgar
6 language to describe sexual conduct.

7 Is that in and of itself suggestive, sir?

8 A. Well, it can't be -- I don't see it as suggestive. It
9 doesn't denote activity. It denotes a body part. And it's just
10 -- in that context or so taken out of context, I don't see it as
11 suggestive.

12 Q. Okay.

13 A. It could be shocking to the child. It could be not.

14 Q. So you're interviewing a child and you say, "Did you engage
15 in oral sex?" And your interpreter says, "Did you suck his
16 dick" to the child.

17 Would you want the interpreter translating your words,
18 your questions with that type of language when you specifically
19 asked a polite neutral language? Is that a situation you find
20 conducive to a non-contaminated response?

21 A. Well, you asked me two questions in a row and I will answer
22 your first one first. I certainly wouldn't like that. I would
23 like the interpreter to use the exact language that I use.

24 Whether the interpreter's changing from a clinical
25 term to a slang term suggests an answer, I can't say that it

1 does. Not in that example that you gave me.

2 Q. Okay.

3 In terms of other factors that increase the risk of
4 suggestibility, is it fair to say that there is -- the presence
5 of a group -- a group setting is a factor that increases the
6 risk of suggestibility?

7 A. It depends on whether that group, that entire group is
8 doing the questioning or whether the questioning is focused on
9 one person or two people. There is a lot of factors. But
10 again, that is a very generic question. It may. It may not. I
11 haven't seen the interview. I don't know.

12 Q. So you haven't seen any of the interviews in this case?

13 A. No, I haven't.

14 Q. Have not read any of the transcripts in this case?

15 A. No. I have deliberately not because I am testifying about
16 generic education testimony, not about this specific case.

17 Q. Okay.

18 In terms of your testimony about grooming, Agent
19 Clemente, you testified that on the spectrum there is a
20 difference between a child who is groomed versus a child who is
21 seduced?

22 A. Yes.

23 Q. You said that seduction of a child is almost the same type
24 of courting behavior that an adult would engage in with an age
25 appropriate person. It's just that it is illegal because it's a

1 child?

2 A. Yes. There is a lot of similarities between grooming and
3 seduction, but the difference where they start to separate is
4 where they begin to use those kinds of adult sort of age
5 appropriate, you know -- well, I try not to use the same word in
6 the definition, but the same age appropriate courting gestures
7 and so forth.

8 Q. But in terms of your time continuum, a person who is
9 engaged in this kind of illegal courting or seduction or
10 grooming, these activities are activities that are prior to the
11 accomplished goal, correct, which is sex?

12 A. In some cases, they are. In other cases they continue
13 throughout or begin after. It really depends on the
14 circumstances. As I said, if you remember, the offender may
15 start with activity on the left side or abduction or forcing a
16 child into sex, but may then, once this has been accomplished,
17 may then begin grooming gestures. Grooming not only gets them
18 access, it can be the methodology for access, but it is also how
19 they get control over a victim and keep them from disclosing.
20 So it can be initiated at any time during the process, continue
21 at any time or stop at any time.

22 Q. So it's your testimony if a person -- strike that.

23 You testified that a young person's response to either
24 being groomed or any activity along this continuum that you
25 described, the response could -- could differ, depending on the

1 activity leading up to the act?

2 A. Absolutely. It differs based on the activity, based on
3 what type of grooming or seduction is used or force. It differs
4 on the child and their circumstances. It differs on the level
5 of parental or other outside adult interference or
6 communication, so there is a whole number of factors that it can
7 depend on.

8 Q. And the basis for your opinion that a child would not be
9 sad after being brutally raped is based on your research in
10 child psychology?

11 A. Well, you just posed something that I did not say. I was
12 asked if during the process a child would necessarily be sad.
13 Now, if you're talking about somebody being brutally raped and
14 whether or not they would be sad, obviously there are -- there
15 are certain, you know, instances where that is going to happen.
16 And it's time dependent. They may be very sad while it's going
17 on and for a time afterwards. It depends when you're talking
18 about that.

19 Are you talking about minutes or are you talking about
20 hours or days? It all depends on when it is and what the
21 circumstances are.

22 Q. So you're saying that the response is really you have to
23 look at the circumstances?

24 A. Certainly, yeah, and the time and the child.

25 Q. But is it fair to say that if a child is brutally raped,

1 you would expect them to be depressed and withdrawn?

2 A. Well, again, depression is a -- is something that can
3 develop over time. Depression doesn't necessarily kick in
4 immediately. I mean, you would have to do a clinical interview
5 of this child to tell me whether or not they were depressed.
6 They may have outward -- what I had said earlier was you may
7 have outward signs that something horrendous is going on. You
8 may have no outward signs. Some children become very adept from
9 a very young age at covering up these kind of things because the
10 of the factors I was talking about earlier. About their shame,
11 they don't want to be exposed in public about this stuff. They
12 don't want their parents or their friends to know about it so
13 they cover it up.

14 We have all seen children fall down and scrape their
15 knee and cry, you know, like crazy but two seconds later they
16 are laughing and running around. They are capable of switching.
17 It depends on their age, it depends on their development. It
18 depends on an array of other circumstances.

19 Q. But the basis for that opinion, sir, have you done -- you
20 don't have a background in child psychology, right?

21 A. No, I don't.

22 MR. BROWN: No further questions, Your Honor.

23 THE COURT: Redirect?

24 REDIRECT EXAMINATION

25 BY MS. DONAHUE:

1 Q. Special Agent Clemente, just to -- just a couple questions
2 about interviewing victims. Based on your experience, if an
3 interviewer asks leading questions, does that necessarily mean
4 the information provided by the child is not true?

5 A. No, it doesn't necessarily mean that. It could open up the
6 possibility, as I said, of contamination where you get an
7 inaccurate or incomplete answer, but it doesn't absolutely mean
8 that. You would have to look at the child and you would have to
9 look for corroboration.

10 Q. You were asked about your testimony in *United States versus*
11 *Thomas*, and you said it was in connection with a detention
12 hearing.

13 A. Yes.

14 Q. What is a detention hearing?

15 A. When -- in that case the defendant was arrested and they
16 were trying to determine whether or not to release the defendant
17 pending trial and whether or not that defendant posed a danger
18 to the community. It's a very limited scope of testimony. And
19 that is, does this particular person pose a danger, risk to the
20 community or to his family if he was released back home pending
21 trial. And so my testimony in that case was very limited in
22 terms of what I could talk about.

23 Q. Were you testifying about grooming in that case?

24 A. No, I wasn't.

25 Q. On the subject of grooming, if a child is being groomed,

1 can that occur before, during or after sexual activity between
2 the offender and the child?

3 A. Yes, it's very much dependent on the circumstances, the
4 type of relationship that the -- that exists between the
5 offender and the victim and the results of the victimization,
6 how does the child respond. Is there anybody else who may
7 intervene. All those things can require an offender to initiate
8 or increase grooming in order to continue to control the child,
9 especially if an offender would like to have this child come
10 back and victimize them again. Grooming can be a very effective
11 tool to create that situation.

12 Q. Have you ever seen grooming in a case where a child has
13 been brutally raped?

14 A. Certainly. There are cases in which children will submit
15 to that, will return to that, because of the other needs that
16 are being satisfied, things that they feel are very important in
17 their life, things that they don't have in their life are being
18 taken care of because they submitted to this kind of activity.

19 It -- grooming can work in any of those. It's -- it's
20 very common in cases where -- as I said earlier, it's extremely
21 common in cases where there are acquaintance offenders, in other
22 words not a parent or guardian, not a complete stranger but
23 somebody they kind of know, you know, whether from the community
24 or some other situation.

25 MS. DONAHUE: I have no further questions.

1 THE COURT: Recross?

2 MR. BROWN: No further questions, Your Honor.

3 THE COURT: Thank you, sir, you are excused.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Good time for a break. Ladies and
6 gentlemen, don't talk about the case or form or express any
7 opinions about the case until it's finally submitted to you. We
8 will take a 15 minute break.

9 (Recess taken)

10 (Jury In)

11 THE COURT: You probably don't realize it but you have
12 been given special privileges already just by walking through
13 there. That area is what we call the well. I believe it comes
14 from old English law. No one is allowed to walk in the well
15 except the Court staff. So we made a special exception for you
16 so you don't have to go through that obstacle course out there.
17 But generally if you hear the lawyers for special permission to
18 walk in the well, that's what that means, that area there.

19 Mr. Lulejian, does the Government have another
20 witness?

21 MR. LULEJIAN: Yes, Your Honor. The United States
22 calls Jason Bordelon.

23 THE COURT: And presumably he is psychic and knows
24 that you are calling him.

25 MR. LULEJIAN: I just sent somebody out. I just sent

1 the supervisor out. I think he is coming, Your Honor.

2 Jason Andrew Bordelon, Government's witness, was sworn

3 THE CLERK: Please be seated. I will need you to
4 state and spell your full name for the record.

5 THE WITNESS: Jason Andrew Bordelon. Last name is
6 spelled B-O-R-D-E-L-O-N.

7 THE COURT: You may proceed.

8 MR. LULEJIAN: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. LULEJIAN:

11 Q. Good afternoon, sir.

12 A. Hello.

13 Q. What is your occupation?

14 A. Senior forensic chemist.

15 Q. Who is your employer?

16 A. The DEA Southwest Laboratory.

17 Q. What is the DEA?

18 A. The DEA is the Drug Enforcement Administration.

19 Q. How long have you been with the Drug Enforcement
20 Administration?

21 A. A little over five years.

22 Q. How long have you been a senior forensic chemist?

23 A. Just over a year.

24 Q. What were you prior to that?

25 A. Forensic chemist.

1 Q. What are your duties in that position?

2 A. Primarily to analyze seized drug evidence, testify in court
3 as necessary and to assist in clandestine laboratory operations.

4 Q. What training must you have to qualify for a position in
5 the DEA laboratory?

6 A. You need a Bachelor's degree either in chemistry or with a
7 certain number of credit hours in chemistry.

8 Q. And do you possess such degree?

9 A. Yes, I do.

10 Q. What do you possess?

11 A. I have Bachelor's degree in environmental chemistry and a
12 Master's degree in chemistry.

13 Q. And where did you go to school?

14 A. Furman University.

15 Q. Was that for both degrees?

16 A. Yes, it was.

17 Q. What specialized training, if any, have you received?

18 A. I received about nine months on-the-job training at my
19 laboratory in different instrumentations in controlled substance
20 analysis, as well as a week in Quantico, Virginia, for
21 clandestine laboratory operation training, and different courses
22 in various instrumentation since I started at the job.

23 Q. Have you had the occasion to chemically analyze substances
24 to determine whether the substance is or contains a narcotic or
25 narcotic-type substance?

1 A. Yes, I have.

2 Q. How many times?

3 A. Approximately 1,500.

4 Q. Have you had the occasion to qualify as an expert in the
5 field of chemistry in the analysis of narcotics and dangerous
6 drugs in state court?

7 A. Yes, I have.

8 Q. Which courts?

9 A. In El Cajon, California; in Bisbee, Arizona or Cochise
10 County. El Cajon is in San Diego county. And also in
11 Los Angeles County.

12 Q. And how many times have you been an expert in state court?

13 A. Three in total.

14 Q. Did you actually testify?

15 A. Yes, I did.

16 Q. Have you had the occasion to qualify as an expert in the
17 field of chemistry in the analysis of narcotics and dangerous
18 drugs in federal court?

19 A. Yes.

20 Q. Which courts?

21 A. In Los Angeles, San Diego, Las Vegas, and Tucson, Arizona.

22 Q. Did you actually testify?

23 A. Yes, I did.

24 MR. LULEJIAN: Your Honor, the United States moves
25 Jason Bordelon be declared an expert in the field of chemistry

1 and the analysis of narcotics and dangerous drugs.

2 THE COURT: Any objection?

3 MR. GUNN: No, Your Honor.

4 THE COURT: I will declare him an expert. Thank you.

5 BY MR. LULEJIAN:

6 Q. Mr. Bordelon, would you please turn behind you and look
7 inside the box that is back there. You can put the box down.
8 What is the contents that you removed from the box?

9 A. There are several heat-sealed evidence envelopes.

10 Q. And are you familiar with those envelopes?

11 A. Yes, I am.

12 Q. All right.

13 Would you please read aloud the Government exhibit
14 numbers contained in this box?

15 A. The Government exhibit numbers are 1251, 1252, 1253, 1254,
16 1255, 1256, 1257, 1258, 1259, 1260, 1263, 1264, 1265, 2037,
17 2038, and 2039.

18 Q. When did you last examine the contents of that box?

19 A. I last examined the contents earlier today and yesterday
20 evening.

21 Q. And what did your examination consist of?

22 A. It consisted of inspecting my seals on the bottom as well
23 as visual inspection of the contents.

24 Q. And how can you identify these exhibit as yours?

25 A. I recognize my seals on the bottom of all of the envelopes

1 as well as some of the case numbers on the label.

2 Q. How did these exhibits come into your possession?

3 A. I received them from our evidence vault at the southwest
4 laboratory.

5 Q. And who submitted this evidence to the DEA laboratory?

6 A. They were submitted by ICE agents via courier.

7 Q. From the time you received the exhibits from the evidence
8 vault to the time that you checked them back in, who had
9 continuous care, custody and control of those exhibits?

10 A. I did.

11 Q. Are the exhibits in the same condition now as they were
12 when you first received them?

13 A. Yes. With the exception of the repackaging and the
14 consumption of some of the drugs for analysis as well as some
15 new seals on the side.

16 Q. And for what purposes did these exhibits come into your
17 possession?

18 A. For the chemical analysis of the substances inside.

19 Q. And, Mr. Bordelon, I am sleeping on the job. You've used
20 an acronym called ICE. What does that mean?

21 A. Excuse me. It stands for Immigration and Customs
22 Enforcement.

23 Q. Could you please take a look at what has been marked for
24 purposes of identification as Government Exhibit No. 1251.

25 A. Yes.

1 Q. Based upon your past experience and training, do you have
2 an opinion as to what this substance is?

3 A. Yes, I do.

4 Q. What is this?

5 A. It contains the drug flunitrazepam.

6 Q. And is there a common or trade name for that drug?

7 A. The common trade name is Rohypnol.

8 Q. How do you recognize this exhibit?

9 A. I recognize my seal on the bottom.

10 MR. LULEJIAN: Your Honor, the United States offers
11 1251 for admission into evidence.

12 THE COURT: Any objection?

13 MR. GUNN: Subject to foundation tying it to this
14 case, Your Honor, no.

15 THE COURT: All right. It will be conditionally
16 admitted.

17 (Government's Exhibit 1251 was received)

18 BY MR. LULEJIAN:

19 Q. What was the total amount of flunitrazepam or Rohypnol
20 found in that exhibit?

21 A. There were three tablets in total.

22 Q. What do the tablets look like?

23 A. The tablets were oval and dark green.

24 Q. How were they packaged?

25 A. They were packaged in a blister pack which is commonly used

1 to dispense pills, medicine.

2 Q. When did you test these exhibits?

3 A. I tested this exhibit starting on the 8th of January this
4 year.

5 Q. From these tests were you able to -- were you able to form
6 an expert opinion as to what the substance is or contains?

7 A. Yes, I was.

8 Q. Would you please state your opinion.

9 A. The exhibit contained the drug flunitrazepam.

10 Q. You can put that in the box now.

11 Would you please examine Government Exhibits No. 1252,
12 1253, and 1254.

13 A. Yes.

14 Q. Based upon your past experience and training, do you have
15 an opinions as to what these substances are?

16 A. Yes, I do.

17 Q. How can you identify these exhibits?

18 A. I recognize my seals on the bottom of all three exhibits.

19 Q. And your opinion is, please?

20 A. That the exhibits contain the drug diazepam.

21 Q. And does diazepam have a common trade name?

22 A. The common trade name is Valium.

23 MR. LULEJIAN: Your Honor, the United States
24 conditionally offers exhibits -- I'm sorry -- the United States
25 offers Government Exhibit Nos. 1252, 1253, and 1254 for

1 admission into evidence.

2 MR. GUNN: Same -- no objection subject to foundation.
3 And my position will be the same as to all these exhibits,
4 Your Honor.

5 THE COURT: Thank you. Then they will be
6 conditionally admitted.

7 (Government's Exhibits 1252, 1253 and 1254 were received)
8 BY MR. LULEJIAN:

9 Q. What was the total amount of diazepam that you found?

10 A. Total there were 17 tablets.

11 Q. What did the tablets look like?

12 A. They were round and light blue.

13 Q. When did you test these exhibits?

14 A. I tested them starting on the 8th of January this year.

15 Q. From these tests were you able to form an expert opinion as
16 to what the exhibits contain or are?

17 A. Yes, I was.

18 Q. What is that opinion?

19 A. That the exhibits contained diazepam.

20 Q. You can put those in the box now, sir.

21 Would you please examine Government Exhibit Nos. 1255
22 and 1256 for purposes of identification.

23 A. Yes.

24 Q. Based on your past experience and training do you have an
25 opinion as to what these substances are?

1 A. Yes, I do.

2 Q. How can you identify these substances?

3 A. I recognize my seals on the bottom of both.

4 Q. What are the substances?

5 A. Both exhibits contain the drug morphine.

6 MR. LULEJIAN: Your Honor, the United States
7 conditionally offers -- let me rephrase. The United States
8 offers Government Exhibits 1255 and 1256 for conditional
9 admission as evidence.

10 THE COURT: Mr. Gunn has agreed that all of the
11 exhibits will be conditionally admitted so you don't need to
12 offer them.

13 MR. LULEJIAN: Thank you, Your Honor.

14 Q. How many tablets of morphine were there?

15 A. In total there were 27 tablets.

16 Q. I am sorry. How many?

17 A. Twenty-seven.

18 Q. What did the tablets look like?

19 A. There were two different types. One type is oval and pink
20 and the other type is round and white, off white.

21 Q. And when did you test these exhibit?

22 A. I tested them starting on the 9th of January of this year.

23 Q. From these tests were you able to form your expert opinion
24 that these drugs were morphine?

25 A. Yes, I was.

1 Q. Would you please look at Exhibit Nos. 1257, 1258, 1259 and
2 1260?

3 A. Yes.

4 Q. Based on your past experience and training do you have an
5 opinion as to what these substances are?

6 A. Yes, I do.

7 Q. What are they?

8 A. These four exhibits contain codeine and acetaminophen.

9 Q. How can you identify these exhibits?

10 A. I recognize my seals on the bottom of all four.

11 Q. What was the total amount of codeine and acetaminophen in
12 those exhibits?

13 A. In total there were 127 tablets.

14 Q. Would you please describe what the tablets look like.

15 A. Again, there were two different types. One type is oval
16 and white and the other type is round and white.

17 Q. And when did you test these exhibits?

18 A. I tested them starting on the 11th of January of this year.

19 Q. Did this testing help form your expert opinion that the
20 exhibits contained codeine and acetaminophen?

21 A. Yes.

22 Q. Would you please now look at Government Exhibit Nos. 1263
23 and 1264.

24 A. Yes.

25 Q. Based on your past experience and training do you have an

1 opinion as to what these substances are?

2 A. Yes, I do.

3 Q. What is Exhibit No. 1263?

4 A. 1263 contains the drug Temazepam.

5 Q. Would you please describe what is in Exhibit No. 1264.

6 Only discussing the relevant drug.

7 A. In 1264 there is a pill-dispensing plastic unit that had

8 several types of drugs in it. The analyzed portions contain

9 Temazepam.

10 Q. And how do you identify these exhibits?

11 A. I identify by my seals on the bottom.

12 Q. And what was the total amount of Temazepam in those

13 exhibits?

14 A. Twenty-five capsules.

15 Q. And would you please describe what the capsules look like.

16 A. The capsules were half dark green, half white.

17 Q. And when did you test these exhibits?

18 A. I tested them starting on the 25th of February of this

19 year.

20 Q. From these tests were you able to form an expert opinion as

21 to what these exhibits actually contain?

22 A. Yes, I was.

23 Q. Would you please state that opinion.

24 A. That the exhibits contain Temazepam.

25 Q. Would you please take a look at Government Exhibit

1 No. 1265.

2 A. Yes.

3 Q. Based on your past training and experience, do you have an
4 opinion as to what this substance is?

5 A. Yes, I do.

6 Q. What is that?

7 A. It is the drug Alprazolam.

8 Q. What is the common name for Alprazolam?

9 A. Xanax.

10 Q. How do you identify this exhibit?

11 A. I recognize my seal on the bottom.

12 Q. What is the total amount of Xanax in that exhibit?

13 A. There were three and a half tablets.

14 Q. Would you please describe to the Court and the jury what
15 the tablets look like.

16 A. The tablets were oval and pink, light pink. Excuse me.
17 Light pink.

18 Q. When did you test the exhibits?

19 A. I tested them starting on the 26th of February.

20 Q. And from your tests, were you able to form an expert
21 opinion as to what the exhibit was or contained?

22 A. Yes, I was.

23 Q. From your testing, what did you ultimately determine that
24 the exhibits contained?

25 A. I determined that the exhibits contain Alprazolam.

1 Q. Finally, would you please look at Government Exhibits
2 No. 2037, 2038, and 2039.

3 A. Yes.

4 Q. Based on your past experience and training, do you have an
5 opinion as to what this substance is?

6 A. Yes, I do.

7 Q. What is that?

8 A. That these three exhibits contain the drug sildenafil.

9 Q. What is the common or trade name for sildenafil?

10 A. The most common trade name is Viagra.

11 Q. Are there other names that you are aware of?

12 A. There is a name on the box of one of these of Kamagra.

13 Q. How can you identify these exhibits?

14 A. I recognize my seals on the bottom of all three.

15 Q. What was total amount of sildenafil that you analyzed?

16 A. In total there were six tablets.

17 Q. Would you please describe what the tablets looked like?

18 A. Again, there were two different types. Both of them were
19 diamond-shaped and blue.

20 Q. And was there any difference between the two?

21 A. There were different markings on the pills.

22 Q. How were the tablets packaged?

23 A. In one type, there was a blister pack which was inside of a
24 box. Another type was a loose pill inside a box. And then a
25 third type was just inside of a blister pack.

1 Q. Did you test these exhibits?

2 A. Yes, I did.

3 Q. Based on your tests, would you please state your opinion to
4 what they contained.

5 A. That the three exhibits contained sildenafil.

6 Q. What was the basis and opinion for the conclusion or the
7 opinion that you reached for this and all the other exhibits
8 that you testified this afternoon?

9 A. My training and experience in addition to the chemical
10 analyses performed.

11 MR. LULEJIAN: I have no further questions,
12 Your Honor.

13 THE COURT: Cross-examination?

14 CROSS-EXAMINATION

15 BY MR. BROWN:

16 Q. Mr. Bordelon, Government Exhibit 1257 -- Government
17 Exhibits 1257, 1258, 1259 and 1260 you said were codeine and
18 acetaminophen?

19 A. That's correct.

20 Q. Is that what would commonly be known as Tylenol with
21 Codeine?

22 A. Tylenol with Codeine does contain both of those drugs.

23 Q. So that is either Tylenol with Codeine or a version of it?

24 A. There is many preparations which contain codeine and/or
25 acetaminophen. Tylenol is one trade name.

1 Q. These exhibits are in these large heat-sealed bags, right,
2 with the various medications inside of them; correct?

3 A. That's correct.

4 Q. There is also some small Ziploc baggies with some
5 crushed-up material inside; right?

6 A. That's correct.

7 Q. Is it correct that those Ziploc baggies with the crushed-up
8 material inside are crushed-up material that you created for
9 purposes of analyzing the medications?

10 A. That's correct.

11 Q. That wasn't the way it was given to you?

12 A. Right. The -- the tablets were crushed by me for the
13 purposes of analysis.

14 Q. So all the medications you were given were either capsules
15 or tablets in a blister pack or some other sort of container?

16 A. With the exception of one exhibit, which was the purple
17 pill dispensers, there were some crushed tablets in that
18 exhibit, but everything else was intact form.

19 Q. And what were those crushed tablets?

20 A. Those were not analyzed.

21 Q. Was there a reason you didn't analyze them?

22 A. I performed a logo index search, which is a reference
23 guide we have for pill identification. There were several
24 tablets in that dispenser that I was able to look up using a
25 reference guide. And I only analyzed the Temazepam, which is

1 the only controlled substance in that batch.

2 MR. GUNN: No further questions, Your Honor.

3 THE COURT: Any redirect?

4 MR. LULEJIAN: One question, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. LULEJIAN:

7 Q. Ziploc baggies that contained the crushed pills or the open
8 capsules that you examined, is there anything unique about those
9 versus the baggies where the pills were crushed ahead of time?

10 A. I'm sorry, can you rephrase the question?

11 Q. I'm sorry, it was an inartful question.

12 The baggies that you -- that contained the drugs that
13 you crushed, did you do anything to those baggies to designate
14 that they were from your sample?

15 A. Yes. All the bags inside the heat seal have my initials on
16 them.

17 MR. LULEJIAN: I have no further questions,
18 Your Honor.

19 THE COURT: Any recross?

20 MR. GUNN: No, Your Honor.

21 THE COURT: Thank you, sir. You are excused.

22 Does the Government have another witness?

23 MS. DONAHUE: Yes, Your Honor. The Government calls
24 Gary Phillips.

25 Gary Phillips, Government's witness, was sworn

1 THE COURT: Thank you. You may take the stand. Would
2 you state and spell your name, please.

3 THE WITNESS: Yes. Good morning everybody. My name
4 is Gary Phillips, P-H-I-L-L-I-P-S.

5 THE COURT: You may proceed.

6 DIRECT EXAMINATION

7 BY MS. DONAHUE:

8 Q. Sir, can you tell us how are you employed?

9 A. I am a supervisory special agent with the Department of
10 Homeland Security Immigration and Customs Enforcement.

11 Q. How long have you been a supervisory special agent with
12 Immigration and Customs Enforcement?

13 A. With Immigration and Customs Enforcement, or the acronym
14 ICE, since March of 2003.

15 Q. And that's as a supervisor. How long have you been
16 employed by ICE?

17 A. By ICE since 2003.

18 Q. Or its predecessor --

19 A. U.S. Customs.

20 Q. -- agency?

21 A. I was employed formally with U.S. Customs, Office of
22 Investigations, since November 7th, 1988.

23 Q. And starting in November of 1988, can you describe your
24 various assignments? First with U.S. Customs and then with ICE.

25 A. Yes. I had, as all agents, approximately four months

1 training in the Federal Law Enforcement Training Academy in
2 Brunswick, Georgia, and from there I was assigned to the Special
3 Agent in Charge, San Diego division of U.S. Customs.

4 My primary duties as a young agent in 1989 was
5 investigating narcotics violations, smuggling operations. And
6 as I progressed through my career, I became heavily involved in
7 undercover -- I'm sorry, undercover narcotics operations. And I
8 have also been in several groups that focused on high technology
9 merchandise that has been smuggled and exported into the
10 United States, crimes against children, child pornography,
11 weapons violations. I have been assigned to the Air Marines
12 smuggling group and the fraud group.

13 Q. What is your current assignment?

14 A. Currently I serve as the assistant attache for the ICE
15 office in Bangkok, Thailand.

16 Q. And what are your duties and responsibilities as the
17 assistant attache in Bangkok?

18 A. I have many, many duties. Primarily it's to oversee all
19 operational matters involving criminal investigations in my area
20 of responsibility, in addition to being attached to the U.S.
21 embassy in Bangkok and four other countries.

22 Q. You mentioned your area of responsibility. What countries
23 are your area of responsibility?

24 A. In my office, we cover Thailand, Laos, Cambodia, Burma and
25 Vietnam.

1 Q. How long have you been the assistant ICE attache in Bangkok
2 covering those five countries?

3 A. Actually it was a U.S. Customs assistant attache beginning
4 in May of 2002 and then we transitioned into ICE in March of '03
5 so all in all, six years.

6 Q. And over the past six years, have you specialized in
7 investigating any particular type of case?

8 A. Yes, I have.

9 Q. What type of case is that?

10 A. Crimes against children involving the violations of the
11 U.S. Protect Act.

12 Q. When you say the U.S. Protect Act, can you say very briefly
13 what you mean by that?

14 A. Yes. It's basically --

15 MR. GUNN: I would object. This is irrelevant.

16 THE COURT: Well, it's not irrelevant, but I don't
17 know that he should be explaining the law.

18 MS. DONAHUE: All right. That's fine.

19 Q. Special Agent Phillips, in your work in Southeast Asia,
20 have you come across the acronym NGO?

21 A. Yes, I have.

22 Q. What does that stand for?

23 A. NGO is an acronym for non-government organization.

24 Q. And are you familiar with functions that non-governmental
25 organizations perform in Cambodia?

1 A. Yes, I am.

2 Q. Can you describe those functions?

3 A. There are several functions of NGO's but in this context,
4 the NGO's that I primarily deal with are NGO's that are involved
5 in either investigation or after-care facilities for children
6 who have been physically, mentally and sexually abused.

7 Q. Are there several different NGO's in Cambodia?

8 A. Yes, there are.

9 Q. Are the victims in this case currently housed at NGO's when
10 they live in Cambodia?

11 A. Yes, these particular victims are housed in an NGO
12 facility.

13 Q. Can you give the names of those two NGO facilities?

14 A. I can. The names are Hagar, H-A-G-A-R, and secondly Agape,
15 A-G-A-P-E.

16 Q. And can you describe generally what services Hagar and
17 Agape provide for the victims?

18 A. These two particular NGO's are primarily focused on long
19 term after-care facilities for children who have been sexually
20 exploited, physically exploited, and mentally exploited. And
21 they provide education, food, clothing, love, care, healthcare,
22 compassion, all at no cost.

23 MR. GUNN: Objection, Your Honor. Move to strike
24 reference to things like love and compassion. It's prejudicial.

25 THE COURT: Overruled.

1 BY MS. DONAHUE:

2 Q. Now, Special Agent Phillips, I would like to turn your
3 attention to June 17th of 2006. You were the assistant attache
4 in Bangkok at that time; is that correct?

5 A. Yes, ma'am.

6 Q. And what country were you actually physically located in on
7 June 17th of 2006?

8 A. In Cambodia.

9 Q. And why were you in Cambodia?

10 A. Because I had received information on -- on another
11 investigation. I was involved in two other investigations.

12 Q. And specifically at about 12:30 in the afternoon on
13 June 17th, where were you?

14 A. I was in Phnom Penh, Cambodia.

15 Q. Who were you with?

16 A. I was with the NGO's, International Justice Mission, World
17 Hope International, the Cambodian National Police.

18 Q. And what were you doing with them?

19 A. I was at a residence waiting for the police to arrive and
20 the Cambodian prosecutor or clerk.

21 Q. If I can have you take a look at Government's Exhibit 1073,
22 which is in the binder in front of you.

23 A. May I move this?

24 THE COURT: Sure.

25 BY MS. DONAHUE:

1 Q. Government's Exhibit 1073, do you recognize that?

2 A. Yes, ma'am, I do.

3 Q. Did you take that photograph?

4 A. Yes, ma'am.

5 Q. What is it?

6 A. It's the photograph of the front gate and wall of a
7 residence.

8 Q. Is that the residence in Phnom Penh that you were
9 surveilling at -- on June 17th of 2006?

10 A. I arrived at that residence, yes.

11 MS. DONAHUE: Move 1073 into evidence.

12 MR. GUNN: No objection.

13 THE COURT: That will be admitted. Thank you.

14 (Government's Exhibit 1073 was received)

15 BY MS. DONAHUE:

16 Q. Would you please describe what happened after you arrived
17 and took the photograph of this gate.

18 A. Yes. After I arrived, we waited for a few minutes and then
19 a contingent of Cambodian National Police officers arrived along
20 with other individuals and subsequently -- shortly thereafter, a
21 vehicle, a blue vehicle arrived. And we then waited for a few
22 minutes and the Cambodian National Police executed a search
23 warrant.

24 Q. When the Cambodian National Police executed the search
25 warrant, did they open that gate?

1 A. Yes, ma'am, they did.

2 Q. Can you please take a look at Government's Exhibit 1074.

3 THE COURT: Any objection to 1074?

4 MR. GUNN: No, Your Honor.

5 THE COURT: 1074 is in.

6 (Government's Exhibit 1074 was received)

7 BY MS. DONAHUE:

8 Q. Please take a look at Government's Exhibit 1077.

9 THE COURT: Any objection, Mr. Gunn?

10 MR. GUNN: No, Your Honor.

11 THE COURT: 1077 is in.

12 (Government's Exhibit 1077 was received)

13 BY MS. DONAHUE:

14 Q. Did you take that photograph?

15 A. Yes, ma'am, I did.

16 Q. What is that a photograph of?

17 A. Once you open the gate, it exposes the exterior of the
18 residence and what you're looking at there is the main
19 entranceway to the residence.

20 Q. You said that a blue car pulled in. Did you see who was
21 inside the blue car?

22 A. Yes, ma'am, I did see who was in the vehicle.

23 Q. Can you explain who you saw?

24 A. I saw the defendant, Mr. Pepe, inside the vehicle in a --
25 in the left seat, handcuffed.

1 Q. Who was he with?

2 A. At the time he was with the Cambodian National Police.

3 Q. And for the record, in the courtroom today do you see the
4 individual who was in the car with the Cambodian National Police
5 on June 17th of 2006?

6 A. Yes, ma'am.

7 Q. Can you please just point to him and state what he is
8 wearing.

9 A. He is sitting next to Mr. Brown with the -- I guess that's
10 black or blue blazer, blue tie, blue shirt.

11 THE COURT: Indicating Mr. Pepe.

12 BY MS. DONAHUE:

13 Q. And did the Cambodian National Police get him out of the
14 car?

15 A. Eventually, yes.

16 Q. After that, can you explain what you observed?

17 A. After he got out of the car, we walked over to the
18 entrance -- I guess that would be called the porch area here
19 where the pillars are -- and they then began to go through what
20 I believe to be his personal effects from a black canvas bag.

21 Q. Did you go into this house?

22 A. Yes, I did.

23 Q. Did you go upstairs inside this house?

24 A. Yes, ma'am, I did.

25 Q. Did you see any bedrooms upstairs?

1 A. Yes, I did.

2 Q. Were you able to just walk right into any bedrooms that you
3 wanted to go into up there?

4 A. No, I was with the Cambodian National Police.

5 Q. Were the doors to the bedrooms open?

6 A. Some of them -- most of them were.

7 Q. Was the bedroom to the -- the door to the master bedroom
8 open?

9 A. No, it was not.

10 Q. How do you know that?

11 A. Because the Cambodian National Police attempted to gain
12 access to the bedroom but it was locked.

13 Q. Were you able to conclude whether -- did the Cambodian
14 National Police, in fact, gain access to that bedroom?

15 A. Yes, they did.

16 Q. And did you see what they did?

17 A. They popped the door and they went into the master bedroom.

18 Q. Can you please take a look at Government's Exhibit 1089.

19 THE COURT: Any objection to 1089?

20 MR. GUNN: No, Your Honor.

21 THE COURT: All right. That will come in.

22 (Government's Exhibit 1089 was received)

23 BY MS. DONAHUE:

24 Q. Did you take this photograph?

25 A. Yes, ma'am, I did.

1 Q. Can you please explain what is this a photograph of.

2 A. This is a photograph as you look into the master bedroom
3 from kind of like where the foyer is or a little landing,
4 looking directly at 180 degrees through the door.

5 Q. When you say the door, do you mean the door to the master
6 bedroom in this house?

7 A. Yes, ma'am.

8 Q. Please take a look at Government's Exhibit 1090.

9 A. Yes, ma'am.

10 Q. Do you recognize that?

11 A. Yes, I do.

12 Q. What is it?

13 A. This is a stick about one inch in diameter. It was propped
14 up between the nightstand and the little corner by the bed.
15 Like a little outpost.

16 Q. And it's actually a photograph of that; is that right?

17 A. Yes.

18 MS. DONAHUE: Move Government's Exhibit 1090 into
19 evidence.

20 THE COURT: Any objection?

21 MR. GUNN: No, Your Honor.

22 THE COURT: All right. That will come in.

23 (Government's Exhibit 1090 was received)

24 MS. DONAHUE: I would ask if Government's
25 Exhibit 1171, which is physical evidence, could be handed to the

1 witness and if we can actually have the agent bring the cart of
2 physical evidence up. Can you hand him Government's
3 Exhibit 1171.

4 Q. Can you tell us if you recognize it and what it is?

5 A. I do.

6 Q. What is it?

7 A. It's the -- an accurate depiction of this photograph. This
8 is the original stick.

9 Q. Is this the stick that came out of that room?

10 A. Yes.

11 Q. Is it in the same physical condition you saw it on June 17,
12 2006?

13 A. Yes.

14 MS. DONAHUE: Move 1171 into evidence.

15 THE COURT: Any objection?

16 MR. GUNN: No, Your Honor.

17 THE COURT: That will come in.

18 (Government's Exhibit 1171 was received)

19 BY MS. DONAHUE:

20 Q. Going back to Government's Exhibit 1089 for a moment, the
21 bed entranceway, was this stick just around the corner to the
22 right as you come into the bedroom?

23 MR. GUNN: Objection, leading, Your Honor.

24 THE COURT: Sustained.

25 BY MS. DONAHUE:

1 Q. Where was the stick?

2 A. If you walk into that bedroom and if you can see the little
3 door that's open, that's kind of like a little vanity thing with
4 a mirror, and then next to the bed so far is a little nightstand
5 and a little alcove. And that stick is propped up basically in
6 between the vanity and the nightstand but near the bedside.

7 Q. Approximately how long had you been inside the house when
8 you found this stick?

9 A. Approximately 15, 20 minutes. I'm sorry. That's at the
10 time of the execution of the warrant.

11 Q. What do you mean by that?

12 A. Basically once I -- once I started snapping pictures, which
13 was fairly close to the actual execution of the warrant, that's
14 what I'm basing my start time on. And then as we went -- as
15 they looked through his personal effects, that took a few
16 minutes, and then when I took these pictures, this -- other
17 pictures, I looked at the times and figured that's how long we
18 went. How long the -- how long the amount of time was --
19 transpired.

20 Q. Were you actually conducting this search?

21 A. No, I wasn't.

22 Q. Why not?

23 A. I have no authority to execute search warrants in other
24 countries.

25 Q. So what was your role?

1 A. My role was a law enforcement agent with the United States,
2 as an observer in the host country that I'm responsible for.

3 Q. Going back to that room, could you take a look at
4 Government's Exhibit 1091 and tell us if you recognize it.

5 A. Yes, I do.

6 THE COURT: Any objection to 1091?

7 MR. GUNN: Probably, not. Can I hear the testimony
8 about it first.

9 THE COURT: All right.

10 BY MS. DONAHUE:

11 Q. Did you take this photograph?

12 A. Yes, ma'am, I did.

13 Q. Where did you take this photograph?

14 A. In the master bedroom.

15 Q. What does it depict?

16 A. It depicts the vanity that I just described a moment ago.

17 Q. I guess where is the stick that you just described in
18 relation to this vanity?

19 A. As you are looking at this vanity, the stick is to the left
20 by a smaller nightstand.

21 Q. And is this a true and accurate depiction of how -- of what
22 you saw in the master bedroom on June 17th of 2006?

23 A. Yes, ma'am, it is.

24 MS. DONAHUE: Move Government's Exhibit 1091 into
25 evidence.

1 MR. GUNN: No objection.

2 THE COURT: That will be admitted.

3 (Government's Exhibit 1091 was received)

4 BY MS. DONAHUE:

5 Q. I would like you to take a look at Government's
6 Exhibit 1095.

7 A. Yes, ma'am.

8 Q. Did you take this picture?

9 A. Yes, I did.

10 Q. Can you tell us what it is?

11 A. This is a photograph of an 82-gram lubricant, KY jelly,
12 that was found on the nightstand by the stick.

13 MS. DONAHUE: Move Exhibit 1095 into evidence.

14 THE COURT: Any objection?

15 MR. GUNN: No, Your Honor.

16 THE COURT: That will come in. Thank you.

17 (Government's Exhibit 1095 was received)

18 BY MS. DONAHUE:

19 Q. Can you take a look at Government's Exhibit 1096.

20 A. I have it. I have the exhibit.

21 Q. Do you recognize that photograph?

22 A. Yes, I do.

23 Q. What is that?

24 A. This is a photograph of the bed and the little alcove that
25 I was describing earlier where the stick was propped up against,

1 with the flowers on the nightstand and the KY jelly.

2 MS. DONAHUE: Move Government's Exhibit 1096 into
3 evidence.

4 THE COURT: Any objection?

5 MR. GUNN: No objection.

6 THE COURT: That will come in. Thank you.

7 (Government's Exhibit 1096 was received)

8 BY MS. DONAHUE:

9 Q. When you were referring to the stick and the KY jelly, can
10 you just explain, now that the photograph is up, where those
11 were located in photograph?

12 A. Yes, ma'am. If you're looking at the bed and you see a
13 little -- I don't know what to call it -- a little alcove, a
14 little like two by four's that jut out with drywall over it,
15 just to the right of that you will see the stick propped up
16 against -- in the corner. To the right of that is a smaller
17 nightstand, flowers in the left-hand corner and the KJ jelly
18 just in front of that.

19 Q. Can you please take a look at Government's Exhibits 1097
20 and 1098 both.

21 A. I have reviewed 1097 and 98.

22 Q. Did you take both of these photographs?

23 A. Yes, I did.

24 MS. DONAHUE: Move them into evidence.

25 MR. GUNN: No objection.

1 THE COURT: They will be admitted. Thank you.

2 (Government's Exhibits 1097 and 1098 were received)

3 BY MS. DONAHUE:

4 Q. First looking at 1097, can you please explain what that is?

5 A. That's the headboard of the master bed in the master
6 bedroom, which shows carvings.

7 Q. Putting 1098 up, Government's Exhibit 1098, can you please
8 explain what that is?

9 A. That's just a -- an extreme close-up of the carvings on the
10 master bedroom headboard.

11 Q. Now, Special Agent Phillips, when you were in this bedroom,
12 did you notice whether there was a closet?

13 A. Yes, I did.

14 Q. Was there?

15 A. Yes, there was.

16 Q. And can you describe the closet?

17 A. It was dark brown. It was at the foot of the bed, a few
18 feet at the foot of the bed. It was fairly large, multi-tiered
19 in some sections, drawers in some sections, and open in some
20 sections as to hang clothing such as suits, pants, towels.

21 Q. Was it a built-in closet or like an armoire?

22 A. Like an armoire.

23 Q. Did you take a photograph of portions of that armoire?

24 A. Yes, I did.

25 Q. Can you take a look at Government's Exhibit 1099.

1 A. I have reviewed 1099.

2 Q. Did you take that photograph?

3 A. Yes, ma'am, I did.

4 MS. DONAHUE: I move it into evidence.

5 MR. GUNN: No objection.

6 THE COURT: That will come in. Thank you.

7 (Government's Exhibit 1099 was received)

8 BY MS. DONAHUE:

9 Q. Can you tell us what 1099 depicts?

10 A. 1099 is part of the closet armoire that has the open
11 section for hanging clothes such as shirts and suits, etc.

12 Q. Did you also take a photograph of the shelving unit to the
13 right of this?

14 A. Yes, ma'am, I did.

15 Q. Turning your attention back to Government's Exhibit 1099,
16 you mentioned men's clothes. Do you know if there were women's
17 clothes hanging in that closet?

18 A. I did not see any women's clothes in that closet.

19 Q. Now turning your attention back, sorry, to Government's
20 Exhibit 1100. Did you take that photograph?

21 A. Yes, I did.

22 Q. Move 1100 into evidence.

23 MR. GUNN: No objection.

24 THE COURT: Admitted. Thank you.

25 (Government's Exhibit 1100 was received)

1 BY MS. DONAHUE:

2 Q. Starting at the top, can you describe what Government's
3 Exhibit 1100 shows?

4 A. Once you open the doors to this particular section of the
5 closet, what one first sees starting from the top is a yellow
6 plastic bag of various types of medications. If you look to the
7 extreme left, you will see a green cap which turned out to be
8 like baby oil. There is some various personal effects,
9 miscellaneous items on the top shelf.

10 Then as you go down to the second tier, finding
11 miscellaneous clothing, sheets, toothbrushes, soap, Q-tips,
12 deodorant, I believe it was cologne, pill boxes for medications,
13 and at the very bottom, cloth strips. You can't see it in this
14 particular picture, but there is rope underneath the cloth
15 strips.

16 Q. If two items of physical evidence, Government's
17 Exhibit 1174 and 1175, could be placed before the witness.

18 Starting first with 1174, do you want to go ahead and
19 take that out of the bag?

20 A. May I stand or shall I sit?

21 THE COURT: Sure.

22 BY MS. DONAHUE:

23 Q. Do you recognize that?

24 A. I do.

25 Q. You can go ahead and move the microphone up if you want.

1 How do you recognize it?

2 A. This is the same type of cloth strip. This is the same
3 cloth strip that we found underneath the -- I'm sorry -- on the
4 bottom tier of the closet.

5 Q. Are these the cloth strips in the photograph, Government's
6 Exhibit 1170 -- 1100 on the bottom?

7 MR. GUNN: Objection. Leading.

8 THE COURT: Overruled.

9 You can answer.

10 THE WITNESS: 1100? May I look again?

11 THE COURT: Yes.

12 THE WITNESS: Yes. It would be underneath that.

13 BY MS. DONAHUE:

14 Q. Can you also open up the bag for Government's Exhibit 1175.

15 Do you recognize that?

16 A. Yes, I do.

17 Q. How do you recognize it?

18 A. This is the same cloth strips with the knots that I saw on
19 June 17, 2006, in the closet.

20 Q. Does it appear to be in the same condition as it was when
21 you saw it on June 17th of 2006?

22 A. Yes, ma'am. Pretty much.

23 MS. DONAHUE: Move Government's Exhibits 1174 and 1175
24 into evidence.

25 MR. GUNN: No objection, Your Honor.

1 THE COURT: Admitted.

2 (Government's Exhibits 1174 and 1175 were received)

3 BY MS. DONAHUE:

4 Q. Go ahead and have a seat and take a look at Government's
5 Exhibit 1101.

6 A. 1101.

7 Q. Did you take that photograph?

8 A. Yes, ma'am, I did.

9 MS. DONAHUE: Move 1101 into evidence.

10 THE COURT: Any objection?

11 MR. GUNN: No, Your Honor.

12 THE COURT: Admitted.

13 (Government's Exhibit 1101 was received)

14 BY MS. DONAHUE:

15 Q. What does Government's Exhibit 1101 depict?

16 A. 1101 is just a close-up shot of the former slide, which I
17 believe is Exhibit 1100, showing a little more detail of the
18 first two shelves of the closet.

19 Q. Turning your attention to the top shelf, the bottle with
20 the green cap, did the Cambodian National Police seize that?

21 A. Yes, they did.

22 Q. Could I have a physical exhibit, Government's Exhibit 1185,
23 before the witness.

24 Do you recognize Government's Exhibit 1185?

25 A. Yes, I do.

1 Q. What is it?

2 A. It's a Johnson's baby oil.

3 Q. How do you recognize it?

4 A. It's the same bottle as -- that I observed on June 17th in
5 the closet of the master bedroom.

6 Q. Move Exhibit 1185 into evidence.

7 MR. GUNN: No objection, Your Honor.

8 THE COURT: Admitted. Thank you.

9 (Government's Exhibit 1185 was received)

10 BY MS. DONAHUE:

11 Q. Take a look at the photograph please, Government's
12 Exhibit 1104.

13 A. I'm looking at 110.

14 Q. Did you take that photograph?

15 A. Yes, I did.

16 MS. DONAHUE: Move 1104 into evidence.

17 THE COURT: Any objection?

18 MR. GUNN: No, Your Honor.

19 THE COURT: That will come in. Thank you.

20 (Government's Exhibit 1104 was received)

21 BY MS. DONAHUE:

22 Q. What is depicted in Government's Exhibit 1104?

23 A. This exhibit depicts the yellow bag on the top shelf of the
24 closet in the previous exhibits. The only difference is it was
25 opened in order to observe what was inside the bag at the time.

1 Q. What does that bag contain?

2 A. This bag contained brown masking tape, white rope, about
3 three-eighths inch diameter, and olive drab green cord, rope.

4 Q. Did you open this bag?

5 A. No, I did not.

6 Q. Do you know who opened this bag?

7 A. The Cambodian police.

8 Q. How long, approximately, after the Cambodia police opened
9 this bag did you take the photograph?

10 A. Well, if you refer to the previous exhibit -- I apologize.
11 I forget which number where the bag was closed -- it was taken
12 just a few seconds after. They were both taken at the same
13 time, 1124 -- I'm sorry -- 1324. 1:24 p.m.

14 Q. So the prior exhibit, which is Government's Exhibit 1101,
15 is that the exhibit that you were referring to just a moment ago
16 in your testimony?

17 A. Yes, ma'am.

18 Q. And what time did you say you took this picture?

19 A. Approximately 1:24 p.m.

20 Q. How do you know that?

21 A. Because that was on the time/date stamp of the image.

22 Q. Government's Exhibit 1104, what time did you take that?

23 A. The same time, 1324 or 1:24.

24 Q. I guess just for accuracy, does that necessarily mean the
25 photograph was taken precisely at 1:24?

1 A. No.

2 Q. Is the time stamp on both of those photographs the same?

3 A. No, I believe it's divided up into seconds. I just rounded
4 it off to minutes.

5 Q. So did you take this photograph within a minute of when the
6 bag was removed from the closet?

7 MR. GUNN: Objection. Leading. Asked and answered.

8 THE COURT: Overruled.

9 THE WITNESS: Yes, I did.

10 BY MS. DONAHUE:

11 Q. Did the Cambodian National Police, in fact, seize that bag?

12 A. Yes, they did.

13 Q. I would ask if Government's Exhibit 1172, which is a
14 physical exhibit, could be placed before the witness.

15 THE COURT: All right.

16 BY MS. DONAHUE:

17 Q. If you could take it out of the ICE packaging and tell us
18 if you recognize it.

19 A. And I failed to mention one other item. My apologies.

20 Q. What is the other item?

21 A. Wire.

22 Q. Are these items in the same condition as they were when you
23 saw them on June 17th of 2006?

24 A. Yes, they are.

25 MS. DONAHUE: Move Government's Exhibit 1104 into

1 evidence -- I'm sorry -- 1172 into evidence.

2 THE COURT: Any objection?

3 MR. GUNN: No, Your Honor.

4 THE COURT: Admitted.

5 (Government's Exhibit 1172 was received)

6 BY MS. DONAHUE:

7 Q. I have a couple more physical exhibits. Government's
8 Exhibit 1178. And 1181 is next. If you want to go ahead and
9 start with 1178. Take that out of the ICE packaging and tell us
10 if you recognize it.

11 A. Yes, I do.

12 Q. What is it?

13 A. It's a shaving kit, black, the Jock, J-O-C-K.

14 Q. How do you recognize it?

15 A. I remember seeing this in the closet in the master bedroom.

16 Q. Is it in the same condition that it was when you saw it on
17 June 17th of 2006?

18 A. Yes, it is.

19 Q. Can you please open that shaving kit. What's inside?

20 A. In the rear pocket, KY Jelly. In the middle pocket, just a
21 toothbrush holder, dental floss, old razor, toothbrush and some
22 miscellaneous personal items.

23 MS. DONAHUE: Move Government's Exhibit 1178 into
24 evidence.

25 THE WITNESS: There is one more thing, ma'am. And in

1 the front pocket a blister pack of Kamagra.

2 THE COURT: Any objection?

3 MR. GUNN: No objection, Your Honor.

4 THE COURT: Admitted. Thank you.

5 (Government's Exhibit 1178 was received)

6 BY MS. DONAHUE:

7 Q. I think you have Government's Exhibit 1181 up there, which
8 is also physical evidence.

9 A. Yes, ma'am.

10 Q. If you could take a look at that. And we're also going to
11 be looking at Government's Exhibits 1205 and 1246 which are
12 physical exhibits.

13 Going back to Government's Exhibit 1181, do you have
14 that in front of you, Special Agent Phillips?

15 A. Yes, ma'am, I do.

16 Q. Do you recognize that?

17 A. I do.

18 Q. What is it?

19 A. It's two Trojan Ultra Texture condoms.

20 Q. How do you recognize them?

21 A. I saw these in the bedroom as well.

22 Q. Move Government's Exhibit 1181 into evidence.

23 THE COURT: Admitted.

24 (Government's Exhibit 1181 was received)

25 BY MS. DONAHUE:

1 Q. Can you take a look at Government's Exhibit 1205. Go ahead
2 and take that out of the package and tell us if you recognize
3 it.

4 MR. GUNN: Could I get the exhibit number again?

5 MS. DONAHUE: I'm sorry. It's 1205.

6 THE WITNESS: I do recognize it.

7 BY MS. DONAHUE:

8 Q. How do you recognize it?

9 A. Because this was very distinctive. It had little monkeys
10 on a moon on the master bedroom bed, the sheet that covers the
11 mattress.

12 Q. Does that appear to be in the same condition as when it was
13 seized on June 17th of 2006?

14 A. Yes, ma'am.

15 MS. DONAHUE: Move Government's Exhibit 1205 into
16 evidence.

17 MR. GUNN: No objection, Your Honor.

18 THE COURT: Admitted.

19 (Government's Exhibit 1205 was received)

20 BY MS. DONAHUE:

21 Q. Do you have Government's Exhibit 1246 up there, which is
22 also physical evidence? Do you want to take that out of the ICE
23 packaging and tell us if you recognize that.

24 A. I do recognize these.

25 Q. What is it?

1 A. These are the peach-colored pillowcases that was part of
2 the bed when we encountered the bed, the same colored sheet was
3 matching this as well.

4 Q. Is that in the same condition as you saw it on June 17th of
5 2006?

6 A. Yes, ma'am.

7 MS. DONAHUE: Move Government's Exhibit 1246 into
8 evidence.

9 MR. GUNN: No objection.

10 THE COURT: Admitted.

11 (Government's Exhibit 1246 was received)

12 BY MS. DONAHUE:

13 Q. Two more pieces of physical evidence, 1187 and 1252, which
14 is in the box that had all the -- the prior witness was looking
15 at, if you want to locate that.

16 In the meantime going back to Government's
17 Exhibit 1187, can you take that out of the ICE packaging and
18 tell us if you recognize that?

19 A. I do recognize it.

20 Q. How do you recognize it?

21 A. This is a dream catcher that was above the bed in the
22 master -- located in the master bedroom above the headboard on
23 the wall.

24 MS. DONAHUE: Move Government's 1187 into evidence.

25 MR. GUNN: No objection.

1 THE COURT: Admitted.

2 (Government's Exhibit 1187 was received)

3 BY MS. DONAHUE:

4 Q. If I can have you take a look at Government's Exhibit 1252.

5 Do you have that in front of you, Government's
6 Exhibit 1252?

7 A. Yes, ma'am, I do.

8 Q. Do you recognize that?

9 A. Yes, I do.

10 Q. What is that?

11 A. This is Valium.

12 Q. And how do you know that?

13 A. It's a blister pack that says "Valium."

14 Q. How do you recognize it?

15 A. I recognize it because I recall seeing it in the bedroom.

16 Q. When you say the bedroom, do you mean the master bedroom?

17 A. The master bedroom. There was actually two places that
18 this was found.

19 Q. 1252 is already in conditionally.

20 THE COURT: That will be admitted.

21 (Government's Exhibit 1252 was received)

22 MR. GUNN: I won't -- we don't object.

23 THE COURT: Thank you.

24 BY MS. DONAHUE:

25 Q. Special Agent Phillips, you can go ahead and have a seat.

1 Was there --

2 THE COURT: He is sitting down.

3 MS. DONAHUE: He is already in his seat. Sorry. One
4 of us is standing.

5 Q. Can I have you take a look at Government's Exhibits 1106
6 and 1107. They are both photographs.

7 A. I have 1106 in front of me.

8 THE COURT: Any objection to 1106 or 1107?

9 MR. GUNN: No, Your Honor.

10 THE COURT: Those are admitted.

11 (Government's Exhibits 1106 and 1107 were received)

12 BY MS. DONAHUE:

13 Q. Taking a look at 1106, can you tell us what that is?

14 A. That's a view looking from the master bedroom into the
15 master bath.

16 Q. You can take a look at the other photograph. What is that,
17 1107?

18 A. Exhibit 1107 is a photograph in which I took of the
19 bathroom -- I'm sorry -- the bath and the shower and the sink
20 area.

21 Q. In what bathroom?

22 A. In the master bath.

23 Q. And where is that master bathroom located?

24 A. It's upstairs, connected to the master bedroom.

25 Q. I would like you to take a look at Government's

1 Exhibit 1108.

2 THE COURT: Any objection to 1108?

3 BY MS. DONAHUE:

4 Q. Did you take that photograph?

5 MR. GUNN: Sorry. I am a little behind. I would like
6 to hear the testimony about that.

7 BY MS. DONAHUE:

8 Q. Did you take this photograph?

9 A. Yes, I did.

10 Q. What does it depict?

11 A. This is a towel rack where some towels and some other
12 miscellaneous clothing, articles, was found just outside of --
13 excuse me -- on top of the landing of the stairs in -- next to
14 the master bedroom, outside the master bedroom.

15 Q. Is this photograph a true and accurate depiction of that
16 towel rack as you saw it in that house on June 17th of 2006?

17 A. Yes, ma'am, it is.

18 MS. DONAHUE: Move 1108 into evidence.

19 MR. GUNN: No objection.

20 THE COURT: Admitted.

21 (Government's Exhibit 1108 was received)

22 BY MS. DONAHUE:

23 Q. And Special Agent Phillips, did the Cambodian National
24 Police seize any of the towels from this towel rack?

25 A. Yes, they did.

1 Q. Take you take a look at physical evidence which is
2 Government's Exhibit 1207. Do you want to go ahead and take it
3 out of the ICE packaging and tell us if you recognize it.

4 A. I do.

5 Q. What are they?

6 A. Two red towels.

7 MR. GUNN: Could I get that exhibit number again?

8 MS. DONAHUE: Government's Exhibit 1207. And we move
9 it into evidence.

10 MR. GUNN: No objection.

11 THE COURT: Admitted.

12 (Government's Exhibit 1207 was received)

13 BY MS. DONAHUE:

14 Q. Special Agent Phillips, was there another bedroom upstairs
15 in this house in addition to the master bedroom that we were
16 looking at a moment ago?

17 A. Yes, ma'am, there was.

18 Q. Did you take photographs inside that bedroom?

19 A. I did.

20 Q. Can you please take a look at Government's Exhibit 1079.
21 It's a photograph in the binder.

22 A. I have 1079 before me.

23 Q. And did you take Government's Exhibit 1079?

24 A. Yes, ma'am, I did.

25 MS. DONAHUE: Move it into evidence.

1 MR. GUNN: No objection.

2 THE COURT: Admitted.

3 (Government's Exhibit 1079 was received)

4 BY MS. DONAHUE:

5 Q. Special Agent Phillips, what does Government's Exhibit 1079
6 depict?

7 A. It's the children's room which --

8 MR. GUNN: Objection, Your Honor. Move to strike the
9 characterization as the children's room.

10 THE COURT: Sustained. That will be stricken.

11 THE WITNESS: It's a bedroom that has a carved
12 headboard, footboard and footers with a blue flowered sheet, a
13 pillow at the foot of the footboard --

14 THE COURT: I don't think you need to describe it.
15 We're looking at the picture.

16 THE WITNESS: Okay.

17 MS. DONAHUE: Can I have physical exhibits 1188, 89
18 and 90, which I am standing in front of. I'm sorry.

19 Q. Starting with the first box that is handed to you and just
20 tell me the number.

21 A. Exhibit 1188.

22 Q. 1188. Do -- what is it? Do you recognize it, and where
23 did it come from?

24 A. This is the white teddy bear that came from the bedroom
25 upstairs located on a table -- or a chair, my apologies.

1 MS. DONAHUE: Move 1188 into evidence.

2 MR. GUNN: No objection.

3 THE COURT: It will be admitted.

4 (Government's Exhibit 1188 was received)

5 BY MS. DONAHUE:

6 Q. Can you take a look at 1189 and answer the same questions.

7 Do you recognize it, what is it and where did it come from?

8 A. 1189 is a blue bunny rabbit located in the upstairs bedroom
9 on a table.

10 MS. DONAHUE: Move 1189 into evidence.

11 MR. GUNN: No objection, Your Honor.

12 THE COURT: Admitted.

13 (Government's Exhibit 1189 was received)

14 BY MS. DONAHUE:

15 Q. Government's Exhibit 1190. Do you recognize it, what is it
16 and where did it come from?

17 A. 1190 is a white Siberian tiger stuffed animal located in
18 the upstairs bedroom.

19 MS. DONAHUE: Move 1190 into evidence.

20 THE COURT: Admitted.

21 (Government's Exhibit 1190 was received)

22 BY MS. DONAHUE:

23 Q. I would ask you to take a look at -- at another photograph,
24 Government's Exhibit 1080.

25 THE COURT: Any objection to 1080?

1 THE WITNESS: I have 1080 before me.

2 MR. GUNN: No, Your Honor.

3 THE COURT: That's admitted.

4 (Government's Exhibit 1080 was received)

5 BY MS. DONAHUE:

6 Q. If you could take a look at physical exhibits 1209 and
7 1212. Do you recognize it, what is it and where did it come
8 from?

9 A. Exhibit 1209 are two blue flowered pillowcases and the
10 accompanying sheets which came from the upstairs bedroom.

11 MS. DONAHUE: Move Government's Exhibit 1209 into
12 evidence.

13 MR. GUNN: No objection.

14 THE COURT: Admitted.

15 (Government's Exhibit 1209 was received)

16 BY MS. DONAHUE:

17 Q. Can you go ahead and pull 1212 out of the package and tell
18 us if you recognize it.

19 A. I do.

20 Q. What it is and where did it came from?

21 A. 1212 -- Exhibit 1212 is a red pillow at the foot of the bed
22 in the upstairs bedroom.

23 MS. DONAHUE: Move Government's Exhibit 1212 into
24 evidence.

25 MR. GUNN: No objection.

1 THE COURT: Admitted.

2 (Government's Exhibit 1212 was received)

3 BY MS. DONAHUE:

4 Q. If you could please have a seat and take a look at a
5 photograph which is Government's Exhibit 1083.

6 Did you take that photograph?

7 A. Yes, ma'am, I did.

8 MS. DONAHUE: Move Government's Exhibit 1083 into
9 evidence.

10 MR. GUNN: I think there should be testimony about
11 what the photograph is first, Your Honor.

12 BY MS. DONAHUE:

13 Q. Special Agent Phillips, can you tell us what Government's
14 Exhibit 1083 which is a photograph -- what it depicts?

15 A. Exhibit 1083 is a front-view photograph of a closet located
16 in the upstairs bedroom.

17 Q. Just so we're clear, when you say the upstairs bedroom, is
18 this the master bedroom or the second bedroom?

19 A. The second bedroom.

20 MR. GUNN: No objection.

21 THE COURT: All right. That will come in.

22 (Government's Exhibit 1083 was received).

23 THE COURT: Is that what's being wheeled up here?

24 Because this is not a good use of time. If counsel has seen all
25 these, then why don't you talk about whether they can come in,

1 but to keep pulling things out of the bag I don't think is a
2 very good use of time.

3 MS. DONAHUE: We're going to pull -- represent very
4 few things and move through.

5 THE COURT: You have five more minutes.

6 BY MS. DONAHUE:

7 Q. Special Agent Phillips, are you familiar with physical --
8 1204, which are a whole stack of boxes?

9 A. Yes, I am familiar with 1204.

10 Q. Okay.

11 And without going through them, can you tell us what
12 the boxes which are labeled as Government's Exhibit 1204
13 contain?

14 A. I can. They have children's clothes, small size, school
15 uniforms, skirts and accompanying blouse, pajamas, party
16 dresses, tank tops, T-shirts, very small size jeans, red and
17 blue in color, a mask with Little Kitty on it, like a filter
18 mask, a red school uniform tie and several other miscellaneous
19 clothing articles that are very small in size.

20 Q. Where were those items taken from?

21 A. In the closet and in the upstairs secondary bedroom.

22 Q. And have you recently reviewed that evidence?

23 A. I have reviewed the evidence, yes, ma'am.

24 Q. And is it in the same condition as it was on June 17th of
25 2006?

1 A. Yes, it is.

2 MS. DONAHUE: Move Government's Exhibit 1204 into
3 evidence.

4 MR. GUNN: No objection.

5 THE COURT: That will come in. Thank you.

6 (Government's Exhibit 1204 was received)

7 BY MS. DONAHUE:

8 Q. If you can take a look at Government's Exhibit 1084.

9 A. I have 1084 before me.

10 Q. Did you take that?

11 A. Yes, ma'am, I did.

12 MS. DONAHUE: Move 1084 into evidence.

13 MR. GUNN: If we could have testimony.

14 BY MS. DONAHUE:

15 Q. What does it depict?

16 A. It's a close-up view of the upper section of the closet in
17 the secondary bedroom upstairs.

18 MS. DONAHUE: Move 1084 into evidence.

19 MR. GUNN: No objection.

20 THE COURT: Admitted.

21 (Government's Exhibit 1084 was received)

22 BY MS. DONAHUE:

23 Q. And, Special Agent Phillips, did the Cambodian National
24 Police seize sheets and towels and books that were on that
25 shelving unit in that closet in that second bedroom?

1 A. Yes, they did.

2 Q. And were those subsequently given to ICE?

3 A. Yes, they were.

4 Q. And are those, based on your recent review, contained in
5 Government's Exhibits 1198, 1199, 1211, and 1213 which are
6 physical exhibits, based on your recent review of those physical
7 exhibits, without your having to go through all of it?

8 A. Yep, they are.

9 MS. DONAHUE: Move those exhibits which are 1198,
10 1199, 1211 and 1213 into evidence.

11 MR. GUNN: No objection.

12 THE COURT: All right. That will come in. Thank you.
13 (Government's Exhibits 1198, 1199, 1211 and 1213 were received).

14 THE COURT: And whenever it's a good time to wrap up,
15 Ms. Donahue because it's time for our break.

16 MS. DONAHUE: Yes. We are just going to move to
17 another area.

18 THE COURT: Okay. Ladies and gentlemen, don't talk
19 about the case. Don't form or express any opinions about the
20 case until it's finally submitted to you. Remember, I have
21 other things to do on Monday but we will be back here again on
22 Tuesday at 8:00 a.m. You're ordered to return at that time and
23 you are ordered to have a great three days.

24 (Jury Out)

25 THE COURT: Thank you, sir. You can step down.

Certificate of Service

I hereby certify that on May 28, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

By: /s/ James H. Locklin
JAMES H. LOCKLIN
Deputy Federal Public Defender

No. 14-50095

**In the United States Court of Appeals
for the Ninth Circuit**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MICHAEL JOSEPH PEPE,

Defendant-Appellant.

On Appeal from the United States District Court
for the Central District of California

The Honorable Dale S. Fischer, Presiding

No. CR-07-00168-DSF

Appellant's Excerpts of Record
[Volume 4 of 12]

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[†] Although this document and the two orders that follow were not filed until after the judgment and notice of appeal were filed, they are placed here in the excerpts because they relate to the trial proceedings.

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE DALE S. FISCHER, JUDGE PRESIDING

United States of America,)

Plaintiff,)

)

vs.)

Case No.

)

CR 07-168 (A) -DSF

Michael Joseph Pepe,)

Defendant.)

)

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS

Day 3 (A.M. Session)

Los Angeles, California

Tuesday, May 13, 2008

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22 ALSO PRESENT: ATTACHE GARY PHILLIPS
23 ICE SPECIAL AGENT EDDY WANG
24
25

1 it fairly and accurately depicts the way it looked on that day.

2 Either one is sufficient so let's stick to the shortest --

3 MR. GUNN: I was trying to use my judgment,
4 Your Honor, in a couple of cases I wanted the witness to explain
5 a little bit more about it and in many I didn't.

6 THE COURT: Great. Thank you.

7 (Recess taken)

8 MR. GUNN: I have gone through a list of exhibits very
9 quickly that the Government gave me. About half or a little bit
10 more I am willing to not have any questions asked about. The
11 others I would like some -- I mean, I doubt I will be
12 objecting -- moving to exclude them on chain of custody grounds
13 but I would like some foundation established.

14 THE COURT: Okay.

15 MR. GUNN: Something similar to the other day.

16 THE COURT: All right. We'll see how that goes. Does
17 the Government know which are which so they can just say that
18 you have agreed to these?

19 MR. LULEJIAN: I'm sorry, Your Honor:

20 MR. GUNN: I don't think they do, Your Honor, because
21 I just went through the list. I haven't had a chance to go over
22 it with them.

23 MS. DONAHUE: If you will just mark them.

24 (Jury In)

25 THE COURT: Good morning. We are back on the record

1 with everyone present. Mr. Lulejian, do you want to call a
2 witness out of order.

3 MR. LULEJIAN: Yes, Your Honor. The Government calls
4 Cynthia Morris-Kukoski.

5 THE COURT: Thank you.

6 Cynthia Lynne Morris-Kukoski, Government's witness, was sworn

7 THE CLERK: Please have a seat. Please state and
8 spell your full name for the record.

9 THE WITNESS: My name is Cynthia Lynne Morris-Kukoski.
10 Last name M-O-R-R-I-S, hyphen, K-U-K-O-S-K-I.

11 THE COURT: We don't want to guess so would you tell
12 your first and middle names.

13 THE WITNESS: C-Y-N-T-H-I-A. My middle name is Lynne,
14 L-Y-N-N-E.

15 DIRECT EXAMINATION

16 BY MR. LULEJIAN:

17 Q. Dr. Morris-Kukoski, if you would speak into the microphone
18 it would be easier for us to hear.

19 A. Sorry about that.

20 Q. What is your occupation?

21 A. I am a forensic examiner at the FBI laboratory, and I am a
22 clinical pharmacist/toxicologist.

23 Q. And in addition to the FBI, are you employed by anybody
24 else?

25 A. Yes, by the United States Navy Reserve.

1 Q. What is your rank in the Naval Reserve?

2 A. I am a lieutenant commander.

3 Q. How long have you been employed at the FBI?

4 A. I've been employed at the FBI laboratory for just about
5 four years now.

6 Q. Prior to joining the FBI laboratory what did you do?

7 A. I was on active duty for the United States Navy.

8 Q. What are your duties at the FBI laboratory?

9 A. At the FBI laboratory I am a forensic examiner in
10 toxicology. As such, I receive biological specimens like blood,
11 urine, body organs, and tampered food substances. I analyze
12 these substances for the presence of poisons and toxins. I then
13 interpret the findings that I come up with, write reports, and
14 testify to those results, if needed, in court.

15 Q. And what are your duties with the United States Naval
16 Reserve?

17 A. With the United States Navy Reserve, I am a clinical
18 pharmacist and clinical toxicologist. My duties take place in
19 the in-patient pharmacy. I receive orders from physicians from
20 the wards.

21 I round in the pediatric intensive care unit and give
22 input and comments to the attendings and to the nurses.

23 I round on patients in the intensive care unit, in the
24 step-down intensive care unit, on cardiology patients, and when
25 asked to, I serve as a clinical toxicology consultant where I

1 consult with physicians on overdose patients and detox patients
2 and occasionally actually a pain patient.

3 Q. What do you mean by rounds?

4 A. When a medical team rounds, you meet in the morning and you
5 all gather together as an interdisciplinary group. You have a
6 nurse, a doctor, a respiratory therapist, pharmacist, and you go
7 through each patient in the medical area and discuss what their
8 problems are, what medicines there are, and what's the goal and
9 plan for the patient.

10 Q. What education and training do you have to qualify as a
11 forensic examiner with the FBI?

12 A. As a -- in order to be a forensic examiner at the FBI
13 laboratory, you first have to have a college degree, be it in
14 chemistry, biochemistry, pharmacy. You then have to undertake
15 an extensive training program that takes about two years.

16 You have to take a bunch of written examinations and
17 pass -- and successfully pass those written tests. You have to
18 get unknown samples to analyze and come up with the right answer
19 and interpret things properly.

20 Once you have done that, you have to sit through an
21 oral board where your peers check with you to see what your
22 response is on specific information to check your knowledge
23 base. You then have several moot courts that you also have to
24 go through.

25 Q. Where did you go to school?

1 A. I have a Bachelor's of Science from the Massachusetts
2 College of Pharmacy in Boston, Massachusetts, and a Doctor of
3 Pharmacy from the Massachusetts College of Pharmacy in Boston,
4 Massachusetts.

5 Q. Is the Massachusetts College of Pharmacy affiliated with
6 any other university?

7 A. It's a Harvard affiliate university, yes.

8 Q. Where did you serve your residence?

9 A. I have my residency in clinical toxicology from the
10 Hennepin Regional Poison Center, Hennepin County Medical Center,
11 Minneapolis, Minnesota.

12 Q. Where are you board certified?

13 A. I am a licensed registered pharmacist in the State of
14 Connecticut, Massachusetts and a national diplomat of the
15 American Board of Applied Toxicology which is a clinical
16 toxicology board.

17 Q. How long have you been practicing pharmacology?

18 A. I have been a licensed pharmacist for almost 20 years.

19 Q. Have you written any articles in the areas of pharmacy and
20 toxicology?

21 A. I have written numerous pharmacology and toxicology
22 articles, yes.

23 Q. Do you serve on the faculty of any universities and
24 colleges?

25 A. Yes. I have served on faculties for pharmacology and

1 toxicology programs across the country.

2 Q. Have you ever testified in court as an expert in the fields
3 of pharmacology and toxicology?

4 A. Yes, I have.

5 Q. Approximately how many times?

6 A. I have testified approximately over a hundred times.

7 Q. And what courts were those in?

8 A. Those were in all different military tribunals.

9 Q. And on which side did you testify as an expert witness in
10 those military tribunals?

11 A. I've been asked to serve as consultant for the Defense, as
12 an expert for the prosecution, and to come in as a neutral party
13 to the Court.

14 MR. LULEJIAN: Your Honor, the United States moves
15 that Cynthia Morris-Kukoski be declared an expert in the field
16 of pharmacology and toxicology.

17 MR. GUNN: No objection.

18 THE COURT: All right. She's an expert in that field.

19 BY MR. LULEJIAN:

20 Q. Dr. Morris-Kukoski, would you take a look at the boxes
21 behind you on the stand.

22 A. Yes, sir.

23 Q. What is inside that box?

24 A. These are various tablets that were seized from the
25 defendant's property.

1 Q. And when did you last look at the contents of that box?

2 A. I looked at these contents last evening.

3 Q. What did your examination consist of?

4 A. What I did was I looked at each packet, I looked at the
5 number up on the top, I looked at the laboratory number, I
6 looked at what the contents said they were, I looked at the
7 markings of the pills, the colors of the pills, and the
8 contents.

9 Q. When you say the number at the top, is the Government's
10 exhibit number?

11 A. Yes, it is.

12 Q. Prior to seeing these drugs, what, if any, information did
13 you review for this case?

14 A. I looked at all the laboratory reports from the DEA
15 laboratory and the medical records from Dr. Watson.

16 Q. What did you do after receiving those -- I'm sorry. What
17 did you do after reviewing those documents?

18 A. After reviewing the documents from the DEA and the medical
19 reports, I was asked to provide some basic pharmacology
20 information on what some of the drugs in -- that were seized
21 were.

22 Q. Did you do anything else at the Government's request?

23 A. Yes, I wrote two written reports based on the information
24 that was seized and I also was asked to provide a drug
25 interaction summary statement from a bunch of lists from an

1 email that were given to me.

2 Q. Okay.

3 Turning back to the tablets and pills that are inside
4 that box, what types of drugs are they? What categories?

5 A. If you look at the categories of drugs that are in the box
6 here today there are a couple different types. The major type
7 would be called -- they would all be considered sedative drugs.
8 There are also some sexual arousing drugs.

9 Q. And what categories of sedating drugs did you find?

10 A. There are opiate analgesics in this box. And
11 benzodiazepine sedative hypnotics.

12 Q. We will get to what those mean in a minute.

13 Do you know whether those drugs are controlled?

14 A. Yes. The opiate analgesics and benzodiazepine sedative
15 hypnotics in this country are all controlled substances.

16 Q. Doctor, I am going to ask you to please take a look at what
17 has been marked as Government Exhibit No. 1273 for
18 identification.

19 THE COURT: Perhaps we could have an explanation of
20 what a controlled substance means.

21 MR. LULEJIAN: Thank you, Your Honor.

22 Q. Doctor, would you please explain to the Court and to the
23 jury what a controlled substance is.

24 A. Sure. A controlled substance is a category that we use
25 when we look at prescription medicines. We have prescription

1 medicine that would require a licensed physician to write an
2 order. When you get to a controlled substance, they list the
3 category based on the abuse potential and the potential harm.

4 So that -- what that would tell a pharmacist and the
5 lay public is something like a controlled substance, C-2, would
6 require a written prescription. You can't give it over the
7 phone and this prescription is only good for a certain period of
8 time, period. They are very highly addictive medicines.

9 And as you go down the class, you also need written
10 prescriptions but they can be called in by the doctor's office
11 but they are only good for a finite period of time because they
12 do have an abuse potential.

13 Q. Are those drugs regulated here in the United States?

14 A. Yes, they are regulated by the FDA.

15 Q. Are you aware whether those drugs are regulated in other
16 countries?

17 A. That I am not sure.

18 Q. Doctor, did you get a chance to take a look at a chart last
19 night?

20 A. Yes, I did.

21 Q. Do you have that chart handy by chance?

22 A. No, I do not.

23 MR. LULEJIAN: Your Honor, may I approach?

24 THE COURT: Yes.

25 BY MR. LULEJIAN:

1 Q. Doctor, I have handed you what has been marked as
2 Government Exhibit 1273 for identification. Do you recognize
3 that chart?

4 A. Yes, I do.

5 Q. What does that chart show?

6 A. This is a chart of the sedative drugs that were seized from
7 the defendant's place.

8 Q. Will you please explain to the Court and jury what is on
9 that chart without showing it to them?

10 A. Sure. This chart has pictures of the opiate analgesic
11 pills that were in this box and the benzodiazepine sedative
12 hypnotic drugs that are in this box.

13 Q. Would this chart be helpful to your explanation in court
14 today of what these drugs do?

15 A. Yes, and it would be easier to see instead of looking at
16 the little teeny things in the box.

17 MR. LULEJIAN: Your Honor, the Government offers
18 Exhibit 1273 for admission into evidence.

19 MR. GUNN: No objection.

20 THE COURT: That will come in. Thank you.

21 (Government's Exhibit 1273 was received)

22 MR. LULEJIAN: May I publish it, Your Honor?

23 THE COURT: You may.

24 BY MR. LULEJIAN:

25 Q. Doctor, are we looking at the chart that you examined on

1 the screen right now?

2 A. Yes.

3 Q. Doctor, I am going to ask you to start talking about each
4 of the drugs. Let's start with the first category of drugs,
5 opiate analgesics. And if I mispronounce these words, I
6 apologize.

7 What is an opiate analgesic?

8 A. An opiate analgesic is a painkiller.

9 Q. How does it work?

10 A. Opiate analgesics work and relieve pain by stimulating
11 opiate receptors in the brain. And when it does this, it
12 increases your threshold or tolerance for pain.

13 Q. Let's start with the first opiate analgesic on your chart.
14 I am going to ask you to take a look at Government Exhibit 1255
15 and 1256.

16 Do you have those handy?

17 A. Yes, I do.

18 Q. Do you recognize what those drugs are?

19 A. Yes, I do.

20 Q. What is it?

21 A. These are morphine tablets.

22 Q. And what are the trade names or generic names associated
23 with those tablets?

24 A. The one morphine tablet has a brand name of Sevredol, which
25 is not known in this country. And the other one is a generic

1 morphine which is morphine sulfate.

2 Q. What is morphine used for?

3 A. Morphine is used for moderate to severe pain, and it is
4 given to people as a pre-medicine before surgery.

5 Q. And what would happen if you gave this medicine to somebody
6 prior to surgery?

7 A. You are giving it to someone before surgery to help put
8 them to sleep.

9 Q. And how does one obtain morphine?

10 A. One obtains morphine from a written prescription from their
11 physician.

12 MR. GUNN: Objection, Your Honor. More to strike.
13 Vague as to time and vague as to place.

14 THE COURT: Sustained.

15 MR. LULEJIAN: I will rephrase it, Your Honor.

16 Q. How does one obtain morphine here in the United States?

17 A. In the United States it requires a written prescription
18 from your physician.

19 Q. How quickly after oral ingestion does morphine work?

20 A. The peak effect of morphine occurs about an hour after you
21 take the medicine orally.

22 Q. And how long do the effects last?

23 A. The effects last for about three to five hours.

24 Q. Did you examine the strength of the tablets in Exhibit 1255
25 and 1256?

1 A. Yes, I did.

2 Q. Starting with the pink tablet, what is the strength of that
3 tablet?

4 A. The pink tablet, the Sevredol, says 20 milligrams of
5 morphine on the package.

6 Q. And the white tablet, please?

7 A. The white tablet, you need a magnifying glass to see, but
8 it's 30 milligrams.

9 Q. Based upon the morphine in those two exhibits, were you
10 able to form an opinion about the pediatric dosing for a
11 preoperative anesthesia?

12 A. Yes. A pediatric preoperative dose for morphine in a child
13 would be less than one tablet.

14 Q. Based on your training and experience, would you dispense
15 either of these two tablets to a child?

16 A. No, I would not.

17 Q. Why not?

18 A. Couple of reasons. One is these are too potent when you
19 start to deal with something that is less than a tablet. In a
20 child you would use a liquid form so you could dose it very,
21 very carefully and very, very exact.

22 Q. Would you please take a look at Government Exhibit Nos.
23 1257, 1258, 1259 and 1260.

24 A. (Witness examines exhibits).

25 Okay. I have.

1 Q. Do you recognize what those drugs are?

2 A. Yes, I do.

3 Q. What are they?

4 A. These are codeine tablets.

5 Q. Is there a binder with them --

6 A. Is there what?

7 Q. I am sorry. Is there another substance combined with the
8 codeine?

9 A. Yes. These are codeine tablets that also contain
10 acetaminophen. And on here, the European or
11 out-of-United-States version of acetaminophen is called
12 paracetamol.

13 Q. And what are the trade names associated with these two
14 exhibits?

15 A. In these the trade names are Codalgin FORTE and Codalgin.
16 And in this country you may know this as Tylenol with codeine.

17 Q. What is codeine?

18 A. Codeine is painkiller used for moderate to severe pain.

19 Q. Is it used for anything else?

20 A. Yes. It's also given before surgery as a general
21 anesthetic.

22 Q. How does one obtain codeine here in the United States?

23 A. One obtains it with a written prescription from your
24 physician.

25 Q. How quickly after ingesting codeine orally would it work?

1 A. It starts to work or have an onset effect in about 30 to 60
2 minutes. The peak or most intense effect that you experience is
3 about 60 to 90 minutes, and those effects last about four to six
4 hours.

5 Q. What is the strength of the codeine tablets that you have
6 in front of you?

7 A. There are two strengths of codeine tablets. The codeine or
8 Coldagin FORTE are 30 milligrams.

9 Q. Could you describe the pill, please, the tablet.

10 A. It is the one, if you look up on the screen, that looks
11 like a caplet. It's the round, oblong-type shape. That's the
12 FORTE.

13 Q. How much codeine was in that one?

14 A. Thirty milligrams of codeine.

15 Q. And the second tablet, the white tablets, round tablets?

16 A. Those are Codalgin. And again you need very good eyes.
17 But it looks like it says eight milligrams of codeine.

18 Q. Based upon the codeine seized, were you able to opine about
19 the pediatric dosing for preoperative anesthesia?

20 A. Yes.

21 Q. And please state your opinion.

22 A. Okay. If you look at the Codalgin FORTE and you only
23 concentrate on the codeine component alone, you would give a
24 child approximately one tablet 60 to 90 minutes before the
25 surgery procedure.

1 If you look at the codeine component in the Codalgin
2 being a lower concentration and only focus on the codeine
3 compound, it would take about four of those tablets, about 60 to
4 90 minutes before surgery.

5 Q. And that would knock the child out?

6 A. Yes.

7 Q. Based on your training and experience, would you dispense
8 either of these tablets to a child?

9 A. No, I would not.

10 Q. Why not?

11 A. These tablets contain way too much paracetamol or
12 acetaminophen in them which is why I said focus only on the
13 codeine component. If and when we use Tylenol with codeine or
14 codeine for a child before surgery, we use Tylenol with codeine
15 elixir or a liquid form so we can tightly control how much we
16 give.

17 Q. If you were to use it in pill form, would you have to do?

18 A. What do you mean?

19 Q. I mean if you wanted to control the amount of codeine given
20 to a child through the pill form, how would you go about doing
21 that?

22 A. We would use a liquid form.

23 Q. You just would never use the pill form?

24 A. Not in a child, no.

25 Q. I want to turn to the second family of drugs now, the

1 benzodiazepine sedative hypnotics. What does that family of
2 drugs do?

3 A. Benzodiazepine sedative hypnotics are known as several
4 things. They are known as sleeping pills, they are known as
5 muscle relaxants, they are known as drugs that are used when
6 someone is having a fitful seizure or what's called a tonic
7 chronic seizure. They are also used to treat anxiety and calm
8 people down.

9 Q. How do they work?

10 A. They work by simulating the benzodiazepine receptor in the
11 brain, which this one they happen to call GABA, and when you
12 simulate this, it has a calming and sedating effect in people.

13 Q. When you say calming and sedating effect, what would happen
14 to someone who took these drugs?

15 A. You are using them to put someone to sleep.

16 Q. Would you please take a look at Government Exhibit
17 No. 1251.

18 A. Sure.

19 Q. Do you recognize this drug?

20 A. Yes, I do.

21 Q. What is that drug?

22 A. This drug is Flunitrazepam.

23 Q. What is the trade name for Flunitrazepam?

24 A. The trade name for Flunitrazepam is Rohypnol.

25 Q. What does that drug do?

1 A. Rohypnol is a very potent sleeping pill or drug used before
2 surgery to put someone to sleep.

3 Q. How quickly after somebody ingesting it would the
4 Flunitrazepam work?

5 A. It starts to work in about 20 to 30 minutes after
6 swallowing the pill and can last for eight to twelve hours.

7 Q. Did you have -- what is the strength of the Flunitrazepam
8 tablets in that exhibit?

9 A. This is a one milligram tablet.

10 Q. And that's the green pill that's over in the left-hand
11 corner?

12 A. Yes, it is.

13 Q. And based on the Flunitrazepam seized or in the evidence
14 bag in front of you, were you able to form an expert opinion
15 about the pediatric dosing for preoperative anesthesia?

16 A. Yes, the preoperative dose used outside the United States
17 is one tablet of one milligram, 90 minutes before surgery.

18 Q. Why do you say outside the United States?

19 A. This drug is not approved for use in the United States.

20 Q. Would you please take a look at the Exhibit Nos. 1252, 1253
21 and 1254.

22 A. Yes.

23 Q. Do you recognize those drugs?

24 A. Yes, I do.

25 Q. What are those?

1 A. These are Diazepam tablets.

2 Q. Does Diazepam have a trade name?

3 A. Yes, it does. It's called Valium.

4 Q. What is Diazepam used for?

5 A. Diazepam has many uses. It's used as a muscle relaxant.

6 It's used to treat those fitful seizures that I talked about.

7 It's used before surgery to put patients to sleep and used to
8 calm them down.

9 Q. How does one obtain Diazepam here in the United States?

10 A. From a written prescription from your physician.

11 Q. How quickly after somebody took Diazepam orally would it
12 work?

13 A. It starts to work in about 30 minutes.

14 Q. And how long do the effects last?

15 A. And it can last for six to eight hours.

16 Q. What is the strength of the tablets in front of you?

17 A. These are ten milligram tablets.

18 Q. Based upon the Diazepam tablets that you have in front of
19 you, were you able to form an opinion about the pediatric dosing
20 for preoperative anesthesia?

21 A. Yes. The pediatric preoperative anesthetic dose for
22 children is one ten-milligram tablet given 45 to 60 minutes
23 before surgery.

24 Q. Would you please examine Government Exhibits No. 1263 and
25 1264.

1 A. Yes, sir.

2 Q. Do you recognize those drugs?

3 A. Yes, I do.

4 Q. What are they?

5 A. These are Temazepam capsules.

6 Q. What is Temazepam?

7 A. Temazepam is a sleeping pill used to manage insomnia or
8 inability to sleep at night.

9 Q. And what color are the tablets?

10 A. These are a greenish blue and white, kind of hard to see
11 the greenish blue. It looks more blue on the screen, but here
12 it is a little bit more green than blue.

13 Q. How does one obtain Temazepam in the United States?

14 A. These are filled with a written prescription from your
15 physician.

16 Q. And how soon after somebody orally ingested the Temazepam
17 would it begin to work?

18 A. They begin to work in about 30 to 60 minutes, which is why
19 you take them about half an hour to an hour before you want to
20 go to bed.

21 Q. How long does the effect work for?

22 A. They last for about four hours.

23 Q. What is the strength of the Temazepam tablets in front of
24 you?

25 A. These are 15 milligram capsules.

1 Q. Based upon the amount of Temazepam seized, were you able to
2 form an expert opinion about the pediatric dosing for
3 preoperative anesthesia?

4 A. These doses are not indicated for preoperative anesthesia.

5 Q. Would they ever be given to a child?

6 A. No, these doses are not indicated by the FDA for use in
7 children.

8 Q. Why not?

9 A. They are only used for the treatment of insomnia, and
10 pediatricians do not treat insomnia with this particular
11 medicine or benzodiazepine in children.

12 Q. What would you use if you had a child with insomnia?

13 A. You would have to speak to the pediatrician. You may want
14 to start with a cough/cold type medicine with sedating
15 properties. Something like diphenhydramine.

16 Q. For the court reporter, I would ask you to spell that last
17 drug.

18 A. Diphenhydramine, which is Benadryl, is
19 D-I-P-H-E-N-H-Y-D-R-A-M-I-N-E.

20 Q. Thank you very much, doctor.

21 A. You're welcome.

22 Q. Would you please take a look at Government Exhibit 1265.

23 Do you recognize this drug?

24 A. Yes, I do.

25 Q. What is it?

1 A. This is Alprazolam.

2 Q. And what is the trade name for Alprazolam?

3 A. The trade name for Alprazolam is Xanax.

4 Q. And what is Alprazolam used for?

5 A. It's used to treat anxiety and manage anxiety disorders, to
6 calm them down.

7 Q. And what is the effect on somebody if they were to take
8 that drug?

9 A. Hopefully, since you're using it for anxiety, is to calm
10 them down, and part of calming someone down is making them
11 sedate or sleep.

12 Q. What would happen if somebody didn't have anxiety that took
13 that drug?

14 A. Then they wouldn't have that basis to help calm them down
15 and would go to sleep.

16 Q. How does one obtain Alprazolam in the United States?

17 A. This drug is obtained with a prescription from your
18 physician.

19 Q. How quickly after oral ingestion does Alprazolam work?

20 A. Alprazolam works in about 60 to 90 minutes after swallowing
21 it.

22 Q. And how long does it last?

23 A. We usually dose it every six to eight hours and in children
24 every eight hours so it lasts about six to eight hours.

25 Q. The Alprazolam that is in that exhibit, what is the

1 strength of the tablets?

2 A. These are .5 milligram tablets.

3 Q. Based on the amount of -- based on the Alprazolam seized,
4 were you able to form an opinion as to the pediatric dosing for
5 anxiety?

6 A. Yes. The management --

7 Q. Please state your opinion.

8 A. The management of anxiety would use one quarter of these
9 tablets, .0125 milligrams in a child every eight hours as needed
10 for anxiety.

11 Q. Would it be safe to give a child a caplet like that, even a
12 broken-up one?

13 A. Not unless you want to put them to sleep.

14 Q. All right, Doctor, I am going to ask you to turn to
15 Government Exhibits 2037, 2038, and 2039.

16 A. Yes, sir.

17 Q. Do you recognize these drugs?

18 A. Yes, I do.

19 Q. What types of drugs are those?

20 A. These are sexually arousing drugs.

21 Q. Do you know the type of drug it is?

22 A. Yes. This is called Sildenafil.

23 Q. What are the trade names for Sildenafil?

24 A. Sildenafil in this country is known as Viagra and in
25 another country it's called Kamagra.

1 Q. What is Sildenafil used for?

2 A. It's used to maintain an erection.

3 Q. And in the United States, how does one obtain this drug?

4 A. With a prescription from a physician.

5 Q. How soon after somebody taking it does the drug work?

6 A. It works within about 10 to 40 minutes after you take the
7 pill.

8 Q. How long does it last?

9 A. Usually up to about four hours.

10 Q. And what is the strength of the tablets seized?

11 A. These are 100 milligram tablets.

12 Q. Do you know what the dosing normally is for these or -- let
13 me rephrase that.

14 What are the strengths that these drugs usually come
15 in in the United States?

16 A. The strength in this country are 25 milligrams, 50
17 milligrams and 100 milligrams.

18 Q. And based on this drug, were you able to form any opinion
19 about pediatric dosing for it?

20 A. Yes. There are -- there is no pediatric dosing of this
21 drug for use in children.

22 Q. One moment, please, Your Honor.

23 Doctor, I neglected to ask you something. What would
24 one normally -- if you were to dose an adult male, how much
25 Viagra would you dispense?

1 A. Anywhere from 25 milligram, 50 milligram or 100 milligram
2 tablets.

3 Q. What factors would it depend on?

4 A. That would be up to -- between the patient and the
5 physician.

6 Q. And are there problems if you take -- are there drugs you
7 should not take with Sildenafil?

8 A. Yes, there are.

9 Q. What types of drugs?

10 A. Some heart medicines should not be taken with Sildenafil.

11 Q. Why?

12 A. Because you're at risk for dropping --

13 MR. GUNN: Objection, Your Honor. Irrelevant.

14 THE COURT: Is there any relevance to this,
15 Mr. Lulejian?

16 MR. LULEJIAN: I will withdraw the question. It may
17 become relevant after cross-examination.

18 I have no further questions, Your Honor.

19 THE COURT: Thank you. Cross-examination?

20 CROSS-EXAMINATION

21 BY MR. GUNN:

22 Q. Is it Dr. Morris-Kukoski?

23 A. Yes, it is.

24 Q. Lots of legitimate drugs make people drowsy or sleepy;
25 correct?

1 A. That is correct.

2 Q. For example, ordinary over-the-counter prescription -- or
3 I'm sorry -- over-the-counter, non-prescription medication like
4 Contact can make people drowsy; right?

5 A. Yes, they do.

6 Q. That is often the side effect of using medications for
7 legitimate purposes; right?

8 A. Yes.

9 Q. And, in fact, some medications are intended to make you
10 drowsy; right?

11 A. Yes, that's their sole purpose.

12 Q. For example, sleep medications or sleeping pills, that is
13 their whole purpose; correct?

14 A. Correct.

15 Q. They are intended not to just to make you drowsy but they
16 are intended to make you go to sleep?

17 A. Yes, or they wouldn't be a very good sleeping pill.

18 Q. In fact, each of the medications that you have testified
19 about here today -- I want to talk about these ones on the -- on
20 the screen there.

21 A. Sure.

22 Q. Each of those has a legitimate medical use; correct?

23 A. Absolutely.

24 Q. Each of them is manufactured by a legitimate multi-national
25 pharmaceutical corporation?

1 A. Yes.

2 Q. And they are all sold by pharmacies in at least some
3 countries, right?

4 A. Yes.

5 Q. For example, codeine is sold as either just codeine or, for
6 example, under the brand name Codalgin; correct?

7 A. Correct.

8 Q. And it's used for the management of pain; correct?

9 A. Correct.

10 Q. Now, it's used -- I believe you testified on direct that
11 it's used for moderate to severe pain?

12 A. Yes.

13 Q. It's actually, according to the treatises that you cite in
14 one of the reports that you wrote, used for mild to moderate
15 pain, isn't it?

16 A. Mild to moderate if you consider the Acetaminophen content
17 in them. If you consider only codeine by itself, you would use
18 that for severe pain.

19 Q. But Tylenol with codeine is for mild to moderate pain;
20 correct?

21 A. Correct. When you have the Acetaminophen in there, yes.

22 Q. And these were all Tylenol with codeine or Acetaminophen
23 with codeine pills; right?

24 A. Yes.

25 Q. So these pills would have been for mild to moderate pain?

1 A. That's correct.

2 Q. And morphine is sold as either just morphine or, for
3 example, under the brand name Sevredol; right?

4 A. Yes.

5 Q. And it's also used for the management of pain; correct?

6 A. Yes. Severe pain.

7 Q. Actually it's for moderate to severe pain; right?

8 A. Moderate to severe, but being a Schedule II controlled
9 substance, you kind of have to work your way up to that.

10 Q. If codeine wasn't working, you might try morphine; right?

11 A. Wouldn't be my next logical step, but, yes.

12 Q. At some point, if codeine wasn't working, you might try
13 morphine; right?

14 A. I would go from codeine probably to a hydrocodone and an
15 oxycodone and eventually to morphine, but sure. Probably from a
16 codeine-type product to a hydrocodone-type product like Vicodin,
17 to then work my way up to an oxycondone-type product like
18 Percocet and then eventually to morphine.

19 Q. But in any event, codeine is for mild to moderate pain, at
20 least when it's combined with Tylenol; right?

21 A. Yes.

22 Q. And morphine is for moderate to severe pain?

23 A. That is correct.

24 Q. And one of the drugs is called Alprazolam?

25 A. Yes. That's a benzodiazepine.

1 Q. And that's sold under the trade name Xanax; right?

2 A. Yes, it is.

3 Q. And the legitimate medical use for that is for the
4 management of anxiety disorders; correct?

5 A. Yes.

6 Q. And then there's Diazepam, which is also known or sold
7 under the brand name of Valium; right?

8 A. Yes, it is.

9 Q. And it's also used for the management of anxiety; right?

10 A. Yes.

11 Q. And it's sometimes used for insomnia also; correct?

12 A. Yes.

13 Q. And then there is this drug called Temazepam; right?

14 A. Yes.

15 Q. That's marketed also under a brand name of Restoril or
16 Restoril; correct?

17 A. Restoril in this country, yes.

18 Q. And it's used for the management of insomnia or sleep
19 problems; right?

20 A. Yes, it helps you sleep.

21 Q. And finally Flunitrazepam -- let me get the pronunciation
22 right. Flunitrazepam?

23 A. Yes. Flunitrazepam.

24 Q. It's also sold under a brand name and manufactured by a
25 major pharmaceutical company; correct?

1 A. Yes, outside the United States.

2 Q. It's sold under the brand name Rohypnol; right?

3 A. Yes.

4 Q. And it's sold in pharmacies and countries outside the
5 United States?

6 A. Yes.

7 Q. And it also has legitimate medical use, doesn't it?

8 A. Yes, it's used to help people sleep.

9 Q. And that's actually the same medical use as Temazepam,
10 isn't it?

11 A. Yes, it is.

12 Q. So if Temazepam wasn't working for someone who had
13 insomnia, they might try Rohypnol; right?

14 A. Yes.

15 Q. In fact, Rohypnol and Temazepam come from the same class of
16 drugs, don't they?

17 A. Yes, they are both benzodiazepine.

18 MR. GUNN: Your Honor, I would like to have an exhibit
19 marked -- actually premarked as Defense Exhibit 610 if I could
20 approach.

21 THE COURT: You may.

22 MR. GUNN: We seem to be missing a clerk here if I
23 could --

24 THE COURT: Just go.

25 MR. GUNN: And there is an extra copy for the Court.

1 THE COURT: Thank you.

2 BY MR. GUNN:

3 Q. Would you look at Defense Exhibit 610, Doctor.

4 Does that appear to be a set of medical records from
5 the VA administration for Michael Pepe?

6 A. This says it is a progress note and the title is from
7 Ventura Primary Care Clinic.

8 Q. In the lower left does it have a patient name?

9 A. For Michael Pepe.

10 Q. And there are actually several progress notes stapled
11 together here; right?

12 A. Yes.

13 MR. GUNN: Your Honor, the Government has stipulated
14 that these are -- satisfy the foundation for business records.
15 I would offer them into evidence, Defense Exhibit 610.

16 THE COURT: Any objection?

17 MR. LULEJIAN: None, Your Honor.

18 THE COURT: They will be admitted.

19 (Defendant's Exhibit 610 was received)

20 BY MR. GUNN:

21 Q. These records reflect that Mr. Pepe was prescribed
22 Temazepam here in the United States, don't they?

23 A. I don't know. I didn't read through all 21 pages that
24 quickly.

25 Q. Well, would you look at the top of the second page.

1 A. Sure. Yes. He was prescribed Temazepam.

2 Q. For sleep; correct?

3 A. Correct.

4 Q. And they also reflect that he was at least at times
5 receiving Acetaminophen with codeine for pain, don't they?

6 A. Yes, they do.

7 Q. That was to be taken as needed; correct?

8 A. That was to be taken two tablets by mouth every four hours
9 as needed for pain.

10 Q. "As needed" means you take it if you are feeling the pain
11 and you don't take it if you are not feeling the pain; correct?

12 A. Absolutely.

13 Q. So that would mean you wouldn't necessarily be taking it on
14 a regular basis; you might just take it when you needed it?

15 A. Correct.

16 Q. Now morphine is also a pain management drug; correct?

17 A. Yes, it is.

18 Q. It is for higher levels of pain than Tylenol with codeine
19 or Acetaminophen with codeine; correct?

20 A. Correct.

21 Q. So if someone was feeling real frustrated with his pain, he
22 might take morphine if he was in a country where he could get it
23 more easily and the codeine wasn't working?

24 A. Potentially, yes.

25 MR. LULEJIAN: Objection. Calls for speculation.

1 THE COURT: Overruled.

2 MR. GUNN: No further questions, Your Honor.

3 THE COURT: Cross-examination? I am sorry. Redirect?

4 REDIRECT EXAMINATION

5 BY MR. LULEJIAN:

6 Q. Doctor, why does one get a prescription for these sedating
7 drugs?

8 A. It depends on --

9 MR. GUNN: Objection. Vague, calls for speculation,
10 Your Honor.

11 THE COURT: Sustained.

12 MR. LULEJIAN: Let me rephrase that. That was a poor
13 question.

14 Q. Doctor, when somebody gets a prescription, is the
15 prescription directed at one person?

16 A. Yes. When you get a prescription, it's intended to be used
17 by the person whose name is written on the prescription.

18 MR. GUNN: Vague as to place or country, Your Honor,
19 and move to strike.

20 THE COURT: That will be stricken. You need to narrow
21 your question, Mr. Lulejian.

22 MR. LULEJIAN: Certainly.

23 Q. Doctor, I am going to ask you a series of questions now
24 about medical practices here in the United States.

25 A. Okay.

1 Q. Doctor, in the United States, does a prescription bear the
2 name of the person obtaining the drug?

3 A. Yes.

4 Q. And how does one go about getting the prescription? What
5 do you have to do first?

6 A. You have to go be seen by a physician.

7 Q. And why?

8 A. To make sure that the medication would be appropriately
9 used. That you don't have any allergies to the medicine. It
10 would be dosed properly and used properly.

11 Q. And a pharmacist will check that prescription as well?

12 A. Yes. A pharmacist would enter it into the database, they
13 would ask you if you have any allergies. They would ask you
14 what your age is, if you have had any problems with the
15 medicines in the past.

16 Q. So the dosing of that drug would then be based on what
17 factors?

18 A. What a normal typical person would be using.

19 Q. Is a prescription intended to go to be used by somebody
20 else?

21 A. No, a prescription should only be used by the person whose
22 name bears on the prescription.

23 Q. Why is that?

24 A. Because that's the person who sought the medical attention
25 and that's the person who the physician intended to use the

1 medicine properly.

2 Q. So in other words it was -- it was that -- that drug was
3 dosed and prescribed to that person for that specific reason?

4 A. Yes.

5 Q. Doctor, is it appropriate -- Doctor, if I had -- if an
6 adult had a prescription for, say, one of these sedating drugs,
7 the six that are on the screen, could one simply just give it to
8 a child and expect the same effects?

9 A. No. Adults are -- children are not little adults and you
10 shouldn't think that you can dose a child like you can an adult.
11 They don't act like adults. They are not little adults.

12 Q. When you say they don't act like adults what do you mean?

13 A. When you look at the dosing of pills, they are formulated
14 for adults, one tablet, two tablets, to be taken every so many
15 hours.

16 Children's dosing is based on weight. And that's
17 usually why you use liquid forms so you can use exact amounts to
18 get the results that you're looking for in children. Less
19 wiggle room like you do with an adult.

20 Q. Why do you have less wiggle room?

21 A. Because of the potential of side effects.

22 MR. GUNN: I would object to this line of questioning
23 as irrelevant.

24 THE COURT: Overruled.

25 Go ahead.

1 BY MR. LULEJIAN:

2 Q. You can answer the question, Doctor.

3 A. Sorry.

4 Q. I will rephrase it. Why is there less wiggle room?

5 A. Because you potentially can have serious side effects.

6 Q. Doctor, I am going to ask you to take a look at the first
7 page of Defense Exhibit No. 610.

8 A. Is that this progress note? I am sorry.

9 THE COURT: Yes.

10 BY MR. LULEJIAN:

11 Q. Yes. Do you see Line Item 7 there?

12 A. Yes.

13 Q. What is Line Item 7?

14 A. Line 7 is lisinopril. It's medicine used to treat high
15 blood pressure.

16 Q. And would you look at Line Item 5, please. What is that
17 drug?

18 A. That is hydrochlorothiazide, which is a water pill used to
19 eliminate water when you retain water as part of the reason of
20 your high blood pressure.

21 Q. And Line Item 3, please?

22 A. Line Item 3 is atenolol, which is another blood pressure
23 medicine that not only lowers blood pressure, but can also
24 decrease your heart rate.

25 Q. And Line Item 9, please.

1 A. Line Item 9 is nitroglycerin tablets used for chest pain.

2 Q. Doctor, the drugs that you just listed, would they have any
3 negative interactions if combined with Sildenafil?

4 A. Yes. When you look at filling a prescription for
5 Sildenafil, you have to make sure that the person does not have
6 a history of chest pain and does not have a history of
7 uncontrolled high blood pressure.

8 Q. What would happen if somebody had high blood pressure or
9 chest pain and took Sildenafil.

10 A. You can --

11 Q. Let me rephrase that. That was a poor question.

12 What is the potential for somebody who took Sildenafil
13 that suffered from either high blood pressure or cardiac disease
14 of some sort?

15 A. What it does is it actually lowers your blood pressure and
16 can increase your heart rate so you could actually get a
17 precipitous drop much more than you would expect in your blood
18 pressure. And you could also get chest pain and a stimulation
19 of your heart rate.

20 Q. Doctor, you talked a little bit about how one doses. You
21 recall cross-examination. Mr. Gunn asked you whether or not one
22 could start with codeine and then work their way up -- excuse
23 me. Let me rephrase that.

24 Mr. Gunn asked you whether or not if you could start
25 with codeine and work your way up to morphine. Do you recall

1 that?

2 A. Yes, I do.

3 Q. In the United States, how would one go about that process?
4 Would one just do it on his own?

5 A. No, you need to be seen by a physician.

6 MR. GUNN: Objection. Irrelevant, Your Honor.

7 THE COURT: Overruled.

8 THE WITNESS: You need to be seen by a physician
9 and/or you would be part of a pain service where a pharmacist or
10 a nurse or anesthesiologist would see you to help manage your
11 pain.

12 BY MR. LULEJIAN:

13 Q. Why would you do that?

14 A. Because you want to make sure that you carefully titrate
15 the side effects and the complications that may arise from
16 taking too much pain medicine too quickly.

17 Q. Does one develop a tolerance for pain medication over time?

18 A. Yes, you do, which is why you need to take more and more
19 after time.

20 MR. LULEJIAN: One moment, please.

21 I have no further questions, Your Honor.

22 THE COURT: Recross?

23 RECROSS-EXAMINATION

24 BY MR. GUNN:

25 Q. You don't know the rules and practices for getting these

1 medications in Cambodia, do you?

2 A. No, I do not.

3 Q. As far as you know, someone might be able to just walk into
4 a pharmacy and buy Rohypnol without any prescription, for
5 example?

6 MR. LULEJIAN: Objection, calls for speculation.

7 THE COURT: Overruled.

8 BY MR. GUNN:

9 Q. You don't know?

10 A. I am not licensed outside the United States, no.

11 Q. You also don't know about practices and going up from one
12 pain drug to another in Cambodia, do you?

13 A. Not in a foreign country, no.

14 MR. GUNN: No further questions.

15 THE COURT: Any redirect?

16 MR. LULEJIAN: None, Your Honor.

17 THE COURT: Thank you very much. Doctor, you are
18 excused.

19 Does the Government want Agent Phillips back on the
20 stand?

21 MS. DONAHUE: Yes, please, Your Honor.

22 THE COURT: Sir, you may retake the stand. You're
23 still under oath.

24 THE WITNESS: Your Honor, may I take two trips?

25 MR. GUNN: I believe I did introduce that into

1 evidence, did I not.

2 THE COURT: It is in evidence. It's Defense
3 Exhibit 610.

4 DIRECT EXAMINATION RESUMED

5 BY MS. DONAHUE:

6 Q. Good morning, Special Agent Phillips.

7 A. Good morning.

8 Q. If you can take a look at a photograph which is
9 Government's Exhibit 1113.

10 A. Yes, ma'am.

11 Q. Did you take that photograph?

12 A. Yes, I did.

13 Q. Move 1113 into evidence.

14 MR. GUNN: No objection.

15 THE COURT: All right. 1113 is in evidence.

16 (Government's Exhibit 1113 was received)

17 BY MS. DONAHUE:

18 Q. Can you tell us what is in that photograph?

19 A. This is located in the center room of the upstairs, a
20 massage table.

21 Q. Can you take a look at Government's Exhibit 1114.

22 A. 1114.

23 Q. Did you also take that photograph?

24 A. Yes, ma'am, I did take it.

25 MS. DONAHUE: Move 1114 into evidence.

1 MR. GUNN: No objection.

2 THE COURT: That will come in. Thank you.

3 (Government's Exhibit 1114 was received)

4 BY MS. DONAHUE:

5 Q. Special Agent Phillips, can you describe what is on that
6 table.

7 A. There is a few -- a game and some books and tampons. And
8 a -- two photo albums.

9 Q. And did the Cambodian National Police seize those items
10 from the defendant's residence when they did the search in June
11 of 2006?

12 A. Yes, they did.

13 Q. And have you reviewed Government's Exhibits 1197, 1202, and
14 1217, and those are physical exhibits -- have you previously
15 reviewed those?

16 A. Yes, I have.

17 Q. When did you take a look at those?

18 A. At various stages when they were first seized and again
19 recently.

20 MS. DONAHUE: Your Honor, I would move those into
21 evidence. It's 1197, 1192, and 1217.

22 MR. GUNN: No objection.

23 THE COURT: You have used two different numbers. You
24 said 1202.

25 MS. DONAHUE: I'm sorry. And 1202.

1 MR. GUNN: I'm sorry. Maybe I missed it. Were those
2 exhibits that are depicted in these photograph?

3 BY MS. DONAHUE:

4 Q. Are those exhibits that are either depicted in this
5 photograph or that were found near the massage table?

6 A. Yes, ma'am.

7 MR. GUNN: No objection.

8 THE COURT: Those will come in. Thank you.

9 (Government's Exhibits 1192, 1197, 1202 and 1217 were received)

10 BY MS. DONAHUE:

11 Q. And Special Agent Phillips, Government's Exhibit 1197,
12 which are children's books, can you describe where children's
13 books were found in the house?

14 A. They were primarily throughout the house, upstairs, in the
15 bedroom.

16 Q. And can you take a look at Government's Exhibit 1115,
17 please.

18 A. I have 1115.

19 Q. Did you take that photograph?

20 A. Yes, ma'am, I did.

21 Q. Move 1115 into evidence.

22 MR. GUNN: No objection, Your Honor.

23 THE COURT: That's admitted. Thank you.

24 (Government's Exhibit 1115 was received)

25 BY MS. DONAHUE:

1 Q. Turning your attention to 1115, do you see that open book
2 -- photo album?

3 A. Yes, I do.

4 Q. What is that?

5 A. It's a photograph of one of the children from the house,
6 S.R.xxx, S-R-x-x-x-x-x.

7 Q. And did the Cambodian National Police seize that photo
8 album?

9 A. Yes, they did.

10 Q. And, in fact, that is Government's Exhibit 1192, isn't that
11 correct, that you previously reviewed?

12 A. Yes, ma'am, it is.

13 Q. I would like you to take a look at a photograph,
14 Government's Exhibit 1118.

15 A. I have 1118.

16 Q. Did you take this photograph?

17 A. Yes, I did.

18 MS. DONAHUE: Move 1118 into evidence.

19 MR. GUNN: No objection, Your Honor.

20 THE COURT: That will come in. Thank you.

21 (Government's Exhibit 1118 was received)

22 BY MS. DONAHUE:

23 Q. Can you tell us what is depicted in Government's
24 Exhibit 1118.

25 A. Yes. This is the upper floor, the second floor of the

1 defendant's residence. The large window is the kids' room where
2 the things that were found -- that the kids had in their room
3 were contained. And this is the corner balcony just prior to
4 reaching the work office. And that far door in the middle of
5 the screen is the entrance to the massage room.

6 Q. Did you, in fact, go into the office or work room?

7 A. Yes, ma'am, I did.

8 Q. I would like you to take a look at a photograph,
9 Government's Exhibit 1122.

10 A. I have 1122.

11 Q. Did you take that photograph?

12 A. Yes, I did.

13 MS. DONAHUE: Move 1122 into evidence.

14 MR. GUNN: No objection, Your Honor.

15 THE COURT: That will come in. Thank you.

16 (Government's Exhibit 1122 was received)

17 BY MS. DONAHUE:

18 Q. What is that a photograph of?

19 A. That's the back of the computer showing how the connections
20 were plugged into the computer, as well as stack of papers on
21 top of the computer.

22 Q. I would like you to take a look at Government
23 Exhibit 1124.

24 A. I have 1124.

25 Q. Did you take that photograph?

1 A. I can't tell if I took this particular photograph or not.

2 I believe I did not.

3 Q. Okay.

4 And do you know how this photograph was taken?

5 A. This photograph was taken by a camera from another
6 organization.

7 MR. GUNN: Objection. Move to strike. No foundation,
8 Your Honor.

9 THE COURT: Why don't you lay some foundation.

10 MS. DONAHUE: Sure.

11 Q. Do you recognize this photograph?

12 A. Yes, I do.

13 Q. Can you tell us how you recognize it?

14 A. This is a photo that I recall seeing after I received some
15 CD's, and this is a photo that is consistent with what I saw --

16 MR. GUNN: Objection. Move to strike. No foundation.
17 Personal knowledge, Your Honor.

18 THE COURT: Overruled.

19 THE WITNESS: Which I saw the day of the seizure.

20 BY MS. DONAHUE:

21 Q. Going back to June 17, 2006, do you recall seeing these
22 items in the office in the defendant's residence?

23 A. Yes, I do.

24 MS. DONAHUE: Move Government's Exhibit 1124 into
25 evidence.

1 MR. GUNN: No objection.

2 THE COURT: That will come in. Thank you.

3 (Government's Exhibit 1124 was received)

4 BY MS. DONAHUE:

5 Q. Specifically, Special Agent Phillips, do you remember the
6 stack of money, the \$1 bills?

7 A. Yes, I do.

8 Q. Special Agent Phillips, I would like you to take a look at
9 some physical exhibits that you have in front of you,
10 Government's Exhibit -- starting with 1177. They are physical
11 evidence.

12 A. I have 1177.

13 Q. Do you recognize it?

14 A. Yes, I do.

15 Q. What is it?

16 A. It's a map of Phnom Penh and on the back it's got --

17 MR. GUNN: Objection. Non-responsive, Your Honor.

18 From here on is nonresponsive.

19 THE COURT: The question is what is it.

20 THE WITNESS: It's a map.

21 BY MS. DONAHUE:

22 Q. Do you recollect -- how do you recognize it?

23 A. I saw it in the office.

24 Q. In the office in the defendant's residence on June 17th of
25 2006?

1 A. Yes.

2 MS. DONAHUE: I move it into evidence. It's 1177.

3 MR. GUNN: No objection, Your Honor.

4 THE COURT: That will come in. Thank you.

5 (Government's Exhibit 1177 was received)

6 BY MS. DONAHUE:

7 Q. Did this map catch your attention?

8 A. Yes, it did.

9 Q. On the day of the search?

10 A. Yes, it did.

11 Q. Why is that?

12 MR. GUNN: Objection. Irrelevant why it caught his
13 attention.

14 THE COURT: Overruled.

15 THE WITNESS: Because on the back of this map it says,
16 "Sex with children is a crime."

17 BY MS. DONAHUE:

18 Q. I would like to turn your attention to Government's
19 Exhibit 1179 which is also physical evidence.

20 A. I have 1179.

21 Q. How do you recognize that?

22 A. This I also saw in the defendant's work room in the -- on
23 the second floor of his residence.

24 Q. On June 17th of 2006?

25 A. On June 17th, '06.

1 MS. DONAHUE: Move 1179 into evidence.

2 MR. GUNN: No objection.

3 THE COURT: That will come in. Thank you.

4 (Government's Exhibit 1179 was received)

5 MR. GUNN: Actually no objection beyond what I made
6 previously in a motion, I should say.

7 THE COURT: All right.

8 BY MS. DONAHUE:

9 Q. I would also have you take a look at 1180. Government's
10 Exhibit 1180. It's in a folder in front of you.

11 A. 1180?

12 Q. That's all right, we will go back to 1179.

13 What is 1179?

14 A. 1179 is a box saying "Kamagra."

15 Q. And is that -- was the box empty or full when you saw it,
16 if you recall?

17 A. I believe it was empty.

18 Q. Is it in the same condition now?

19 A. Yes, ma'am.

20 Q. I would like you to take a look at Government's
21 Exhibit 1238 which is a document -- I'm sorry. It's in the
22 folder. You have 1180 now in front of you, too. Great.

23 Take a look at Government's Exhibit 1180.

24 A. I have 1180.

25 Q. Do you recognize that?

1 A. Yes.

2 Q. Where have you seen that?

3 A. This was also in the office.

4 MS. DONAHUE: Move 1180 into evidence.

5 MR. GUNN: No objection.

6 THE COURT: It will come in. Thank you.

7 (Government's Exhibit 1180 was received)

8 BY MS. DONAHUE:

9 Q. What is 1180?

10 A. It's the insert for the box, Exhibit 1179, the information
11 about Kamagra and the directions on how to use it.

12 Q. And now turning your attention back to 1238.

13 A. 1238 I have.

14 Q. Yes. Do you recognize Government's Exhibit 1238?

15 A. I do.

16 Q. Where did it come from?

17 A. That also came from the office upstairs in the defendant's
18 residence in Phnom Penh.

19 MS. DONAHUE: I move 1238 into evidence.

20 MR. GUNN: No objection.

21 THE COURT: That will come in. Thank you.

22 (Government's Exhibit 1238 was received)

23 BY MS. DONAHUE:

24 Q. What is 1238?

25 A. It's a 2006 planner, calendar.

1 Q. Okay.

2 And now I would like to turn your attention back to
3 the binder with the photographs and have you take a look at
4 Exhibit 1143 from the binder. It's a photograph.

5 A. I have 1143.

6 Q. Did you take that photograph?

7 A. Yes, I did.

8 MS. DONAHUE: Move 1143 into evidence.

9 MR. GUNN: No objection, Your Honor, subject to
10 reserving an objection regarding the writing, depending on the
11 testimony.

12 THE COURT: All right. That will come in. Thank you.

13 (Government's Exhibit 1143 was received)

14 BY MS. DONAHUE:

15 Q. Can you tell us what Government's Exhibit 1143 is?

16 A. It's a flash drive or thumb drive.

17 Q. Where did this come from?

18 A. In the computer room.

19 Q. And is that in the defendant's residence on June 17th of
20 2006?

21 A. Yes.

22 Q. And do you see the handwriting beneath that blue thumb
23 drive?

24 A. Yes, I do.

25 Q. Whose handwriting is that?

1 A. That's my handwriting.

2 Q. When did you write that?

3 A. On the following day. I believe it was -- I would have to
4 look at picture and the properties, but I believe it was on the
5 18th.

6 Q. Did the Cambodian police take this from the defendant's
7 office?

8 A. They did.

9 Q. The thumb drive?

10 A. Yes, they did.

11 Q. Now, Special Agent Phillips, did you observe a digital
12 camera in the defendant's office at the time that you were
13 observing this search?

14 A. No, I did not.

15 Q. Did you see any evidence to suggest that he owned a camera?

16 A. Yes, I did.

17 Q. What evidence was that?

18 A. In the office --

19 MR. GUNN: Objection, Your Honor. Move to strike.
20 This calls for the witness's speculation and opinion.

21 THE COURT: Why don't you ask him what he saw.

22 BY MS. DONAHUE:

23 Q. What did you see?

24 A. I saw an empty camera box.

25 Q. And was a video taken of this search that the Cambodian

1 National Police conducted of the defendant's residence?

2 A. Yes, there was a video.

3 Q. Who took that video?

4 A. An NGO by the name of International Justice Mission.

5 Q. And have you -- have you reviewed that video?

6 A. Yes, I have.

7 Q. Several times?

8 A. Several times, yes.

9 Q. Does that video show the seizure or show the camera box?

10 A. Yes, it does.

11 Q. And have you reviewed Government's Exhibit 1285, which is a
12 copy of that video?

13 A. I have.

14 MS. DONAHUE: Your Honor, we would ask permission to
15 just play the snippet from that video.

16 THE COURT: A short snippet?

17 MS. DONAHUE: It's an extremely short snippet.

18 THE COURT: Okay. And then we will take our break.

19 (Whereupon, the video was played for the jury)

20 BY MS. DONAHUE:

21 Q. Special Agent Phillips, what room are we seeing there?

22 A. This is the computer or the work room area on the second
23 floor of the defendant's residence. Right there.

24 Q. And earlier when you mentioned a box, can you just describe
25 where that is on the screen and what we're looking at?

1 A. It's -- the box is a blue and black box that says
2 "Minolta," and it's kind of like in the corner area of the
3 office.

4 Q. And when Immigration and Customs Enforcement received the
5 evidence in this case from the Cambodian National Police, was
6 the box that we see in that video included in that evidence?

7 A. No, it was not.

8 THE COURT: Is this a good time for a break?

9 MS. DONAHUE: That's the only snippet.

10 THE COURT: Ladies and gentlemen, don't talk about the
11 case or form or express any opinions about the case until it's
12 finally submitted to you. We will take a 15 minute break. I
13 will try to get back to you as soon as I can but my other jury
14 has a question.

15 (Recess taken)

16 THE COURT: Agent Phillips, you are still under oath.

17 Ms. Donahue, you may continue.

18 MS. DONAHUE: Thank you, Your Honor.

19 I believe before the break I neglected to move
20 Exhibit 1179, which was the empty Kamagra box, into evidence. I
21 move it in at this time.

22 THE COURT: Any objection?

23 MR. GUNN: Only the prior objection.

24 THE COURT: That was in.

25 MS. DONAHUE: Oh, thank you.

1 Q. Special Agent Phillips, if you can take a look at some
2 documents starting with the Government's Exhibit 1222,
3 twelve-twenty-two.

4 A. I have 1222.

5 Q. What is that?

6 A. This is an application form for the Newton Thilay School,
7 elementary school.

8 Q. Where did it come from?

9 A. It came from the defendant's office located upstairs in
10 Phnom Penh.

11 MS. DONAHUE: Move 1222 into evidence.

12 MR. GUNN: No objection, Your Honor.

13 THE COURT: That will come in. Thank you.

14 (Government's Exhibit 1222 was received)

15 BY MS. DONAHUE:

16 Q. Special Agent Phillips, do you know who this application is
17 for?

18 A. Yes, I do.

19 Q. Who is this application for?

20 A. This is for S.R.xxx.

21 Q. How do you know that?

22 A. Because I recognize the year, the date of birth year, the
23 place of birth in Kiensbay, which is in Cambodia, and the
24 phonetic spelling of her mother's name on the bottom, Kumlang.

25 Q. Take a look at Government's Exhibit 1223, please.

1 A. I have 1223.

2 Q. What is that document?

3 MR. GUNN: Objection. Your Honor. No foundation.

4 BY MS. DONAHUE:

5 Q. Do you recognize this document?

6 A. Yes, I do.

7 Q. How?

8 A. I saw this on the -- in the work room, the computer room at
9 the defendant's house in Phnom Penh, Cambodia.

10 MS. DONAHUE: Move 1223 into evidence.

11 MR. GUNN: No objection subject to a relevance
12 objection, Your Honor.

13 THE COURT: That will come in.

14 (Government's Exhibit 1223 was received)

15 BY MS. DONAHUE:

16 Q. What is Government's Exhibit 1223?

17 A. This is also an application form for the Newton Thilay
18 elementary school.

19 Q. Do you know who this application is for?

20 A. I do.

21 Q. Who is it for?

22 MR. GUNN: Objection. No foundation. Personal
23 knowledge, Your Honor.

24 THE COURT: Lay a foundation, please, Ms. Donahue.

25 BY MS. DONAHUE:

1 Q. Based on your review of the document and your own personal
2 knowledge in this case, were you able to determine who this
3 application is for?

4 A. Yes.

5 Q. How were you able to determine that?

6 A. By looking at the applicant information. It's handwritten
7 on the form.

8 Q. And were you familiar with that information based on your
9 investigation?

10 A. Yes.

11 Q. And based on your investigation and the information on the
12 form, were you able to conclude who this application is for?

13 A. Yes.

14 MR. GUNN: No foundation -- I'm sorry.

15 THE COURT: Overruled.

16 BY MS. DONAHUE:

17 Q. And who was it for?

18 MR. GUNN: No foundation of personal knowledge. Calls
19 for opinion based on hearsay, Your Honor.

20 THE COURT: Overruled.

21 THE WITNESS: This is for one of the children named
22 S.S.xxx. S-S-x-x-x-x-x.

23 BY MS. DONAHUE:

24 Q. How were you able to determine that?

25 A. There are a couple of reasons. It's phonetically spelled

1 on this particular form, but I do recognize the date of birth,
2 the year of the date of birth as her year of birth, and the
3 place of birth in Kiensbay, K-I-E-N-S-B-A-Y, and again the
4 phonetic spelling of the mother, Kumlang.

5 BY MS. DONAHUE:

6 Q. I would like you to take a look at a photograph,
7 Government's Exhibit 1801.

8 A. I have 1801.

9 Q. Do you recognize what's in that photograph?

10 A. Yes, I do.

11 Q. What is it?

12 A. This is a photograph of a portion of the Newton Thilay
13 school in Toulkork region district of Phnom Penh.

14 MS. DONAHUE: And move 1801 into evidence.

15 MR. GUNN: No objection.

16 THE COURT: That will come in, thank you.

17 (Government's Exhibit 1801 was received)

18 BY MS. DONAHUE:

19 Q. And Special Agent Phillips, how far is this branch of the
20 Newton Thilay school from the defendant's residence in June of
21 2006?

22 A. It's approximately a hundred yards, give or take a few
23 yards.

24 Q. How do you know that?

25 A. Because I walked the distance off.

1 Q. I would like you to take a look at Government Exhibit 1224,
2 which is a document. And actually you can take a look at the
3 entire group, 1224 through 1233.

4 A. Okay. I have 1224 through 1233.

5 Q. Do you recognize those exhibits?

6 A. Yes, I do.

7 Q. And what are they?

8 A. These are receipts from the Newton Thilay school in the
9 Toulkork region district of Phnom Penh.

10 Q. And where did those receipts come from?

11 A. I observed these receipts in the office in the defendant's
12 house in Phnom Penh on the second floor.

13 MS. DONAHUE: I move Government's Exhibits 1224
14 through 1233 into evidence.

15 MR. GUNN: No objection.

16 THE COURT: Those will come in. Thank you.

17 (Government's Exhibits 1224 through 1233 were received)

18 BY MS. DONAHUE:

19 Q. Special Agent Phillips, when you say the Toulkork region of
20 Phnom Penh, what do you mean by that?

21 A. The Toulkork -- and I apologize, it's T-O-U-L-K-O-R-K.
22 It's a district within Phnom Penh. It's a geographical
23 district, area.

24 Q. And was the defendant's residence in June of 2006 located
25 in that area?

1 A. Yes, it was.

2 Q. If I could just have you take a look at one of those
3 receipts, which is Government's Exhibit 1224.

4 A. I have 1224.

5 Q. You said you were able to determine that this was for the
6 Toulkork branch of the Newton Thilay school. How were you able
7 to figure that out?

8 A. Toulkork is abbreviated on the branch TK to Toulkork.

9 Q. And is the abbreviation TK on that document?

10 A. Yes.

11 Q. Do each of these receipts 1224 through 1233 contain the
12 name of the student?

13 A. Yes, they do.

14 Q. And this particular one, 1224, who is this receipt for?

15 A. This is for L.K.xxxxx, L-K-x-x-x-x-x-x-x.

16 Q. Does each of the receipts look like this one where it says
17 "Full Name" and then the name of the student?

18 A. Yes, they do.

19 Q. I am going to ask you to take a look now at Government's
20 Exhibits 1234 through 37.

21 A. I have 34 through 37 before me.

22 Q. What are those?

23 A. These are various articles, newspaper clippings from, I
24 believe, two different Cambodian newspapers, referring to
25 pedophiles in Cambodia.

1 Q. Where did these clippings come from?

2 A. These clippings came from the defendant's office on the
3 second floor of his residence located in Phnom Penh.

4 MS. DONAHUE: Move 1234 and 37 into evidence subject
5 to an objection that counsel has -- Defense counsel has raised.

6 MR. GUNN: Yes, Your Honor. I made one general
7 objection previously but also may have objections to some of the
8 content, and counsel and I will consult regarding that.

9 THE COURT: Thank you. Those will be admitted.

10 (Government's Exhibits 1234 through 1237 were received)

11 BY MS. DONAHUE:

12 Q. Special Agent Phillips, were these in the same format when
13 you saw them in the defendant's office?

14 A. They were cut-out clippings, yes.

15 Q. You didn't cut them out; is that right?

16 A. No, I did not.

17 Q. And you didn't see the police cut them out?

18 A. No, I did not.

19 Q. I would like you to take a look at Government's
20 Exhibit 1238. I'm sorry. I already moved that one into
21 evidence, I apologize.

22 1241.

23 A. I have 1241.

24 Q. Do you recognize this?

25 A. Yes, I do.

1 Q. What is it?

2 A. This is the family book, a copy of the family book.

3 Q. Where did this document come from?

4 A. It came from the second floor computer work room of the
5 defendant's residence in Cambodia. Phnom Penh, Cambodia.

6 MS. DONAHUE: Move 1241 into evidence.

7 MR. GUNN: No objection, Your Honor.

8 THE COURT: That will come in. Thank you.

9 (Government's Exhibit 1241 was received)

10 BY MS. DONAHUE:

11 Q. Showing you the first page, even though it's not written in
12 English, Special Agent Phillips, how did you recognize this as a
13 family book?

14 A. Through the course of six years of working in Cambodia, I
15 have seen many family books, and this is an accurate depiction
16 of what the typical family book looks like.

17 Q. And essentially what is a family book?

18 A. Basically it's a registry of your family members when
19 they're born, they enter the -- they are supposed to enter their
20 date of birth and a business of the family members within
21 your -- that respective family.

22 Q. Does it operate a little bit like a birth certificate in
23 the United States?

24 A. In Cambodia it does, yes.

25 Q. In Cambodia.

1 I would like you to take a look at Government's
2 Exhibits 1275 and 76.

3 A. I have 1275 and 76.

4 Q. What are those?

5 A. 1275 is the hard drive from the computer that was found in
6 the computer work room on the second floor.

7 MR. GUNN: Objection, Your Honor. Move to strike. No
8 foundation of personal knowledge.

9 THE COURT: Would you lay some foundation,
10 Ms. Donahue.

11 MS. DONAHUE: Sure.

12 Q. Could you take a look at Government's Exhibit 1275. Do you
13 recognize that?

14 A. I do.

15 Q. Can you explain how?

16 A. My initials are on the hard drive. This is the hard drive
17 that was taken out of the computer.

18 Q. When you say taken out of the computer, which computer are
19 you referring to?

20 A. The computer that was located on the second floor of the
21 defendant's residence in Phnom Penh, Cambodia.

22 Q. And your initials are on it?

23 A. My initials, date, and the time and who it was received
24 from.

25 MS. DONAHUE: Move Government's Exhibit 1275 into

1 evidence.

2 MR. GUNN: Still not sufficient foundation,
3 Your Honor.

4 THE COURT: I'll allow it.

5 (Government's Exhibit 1275 was received)

6 BY MS. DONAHUE:

7 Q. I would like you to take a look at Government's
8 Exhibit 1276.

9 A. I have 1276.

10 Q. Do you recognize that?

11 A. I do.

12 Q. How do you recognize it?

13 A. This is the thumb drive that I saw at the defendant's
14 residence on June 17, 2006, second floor, computer work room.

15 Q. Is this inside a plastic bag?

16 A. Yes it is.

17 Q. Is that bag labeled?

18 A. Yes.

19 Q. Is this the -- is this the thumb drive that the Cambodian
20 National Police ultimately turned over to Immigration and
21 Customs Enforcement?

22 A. Yes, it is.

23 Q. Move Government's Exhibit 1276 into evidence.

24 MR. GUNN: No objection.

25 THE COURT: Admitted. Thank you.

(Government's Exhibit 1276 was received)

BY MS. DONAHUE:

Q. And Special Agent Phillips, now I would like you to take a look at a series of documents, 1277 through 1284. That's Government's Exhibit 1277 through 1284.

A. I have 1277.

THE COURT: Go ahead and look at all of them, sir.

THE WITNESS: I have reviewed all the documents.

BY MS. DONAHUE:

Q. Do you recognize those documents, 1277 through 1284?

A. Yes, I do.

Q. And can you tell us generally what they are and specifically where they came from.

A. There is a book, computer software applications. There is a CD for Windows XP.

Q. Do they pertain generally to the operation of computer software -- do 1277 through 1282 pertain generally to the operation of computer software?

A. Yes. Including some emails.

MS. DONAHUE: Move 1277 through 1284 into evidence.

MR. GUNN: No objection, Your Honor.

THE COURT: Those will come in, thank you.

(Government's Exhibits 1277 through 1282 were received)

BY MS. DONAHUE:

Q. I would like you to take a look at 1283, which you just had

1 in front of you.

2 A. 1283?

3 Q. 1283, yeah. It's one of the documents.

4 A. I have 1283.

5 Q. Specifically what is that?

6 A. This is the warranty card for the Minolta camera associated
7 with the box.

8 Q. And specifically if you can take a look at Page 3 of that
9 warranty.

10 Near the bottom where it says "Dealer Record," what is
11 the product number?

12 A. Dimage, D-I-M-A-G-E, S414.

13 Q. Is that the same model camera as for the box that we saw in
14 the search warrant video?

15 A. Yes.

16 Q. I would like you to take a look now at Government's
17 Exhibit 1286.

18 A. I have 1286.

19 Q. Do you recognize that?

20 A. I do.

21 Q. What is it?

22 A. This is a computer CD insert that was found in the computer
23 room.

24 Q. When you say a CD insert, what do you mean?

25 A. CD's sometimes come in plastic, hard plastic inserts -- I'm

1 sorry -- the hard plastic coverings to protect a CD, and this
2 was the insert which labeled what the CD could have been.

3 Q. Where did this come from?

4 A. This came from the second floor computer work room of the
5 defendant's residence in Phnom Penh.

6 MS. DONAHUE: Move 1286 into evidence.

7 MR. GUNN: No objection.

8 THE COURT: That will come in. Thank you.

9 (Government's Exhibit 1286 was received)

10 BY MS. DONAHUE:

11 Q. Is there a reason why this CD insert or CD cover caught
12 your eye?

13 A. Yes.

14 Q. Why is that?

15 MR. GUNN: Objection, Your Honor. Irrelevant.

16 THE COURT: Sustained.

17 BY MS. DONAHUE:

18 Q. In addition to this disk, did the Cambodian National Police
19 find any DVD's in the defendant's residence?

20 A. Yes, they did.

21 Q. Where did they find DVD's?

22 A. There were two locations. Primarily.

23 One location was the computer work room upstairs on
24 the second floor, and then there were a few others downstairs by
25 the television where the DVD player was in the open living

1 space.

2 Q. Focusing first on the DVD's that were upstairs in the
3 office, generally what kind of disks were those, based on your
4 observations of the labels?

5 MR. GUNN: Objection, Your Honor. Irrelevant.
6 Rule 403.

7 THE COURT: Overruled.

8 THE WITNESS: They were pornographic DVD's.

9 MR. GUNN: Objection, Your Honor. Move to strike,
10 Rule 403. It's irrelevant.

11 THE COURT: What kind of disks? That's not even
12 responsive. Maybe your question was irrelevant. That will be
13 stricken.

14 MS. DONAHUE: I asked --

15 THE COURT: That will be stricken. Ask another
16 question.

17 BY MS. DONAHUE:

18 Q. Did the Cambodian National Police also find DVD's
19 downstairs?

20 A. Yes, they did.

21 Q. Generally what kinds were those?

22 A. Like movies, action movies.

23 Q. And now I would like to turn your attention back to a
24 photograph from the first binder, Government's Exhibit 1128.

25 A. 1128?

1 Q. Yes. 1128.

2 A. I have 1128.

3 Q. Did you take that photograph?

4 A. Yes, I did.

5 Q. I move 1128 into evidence.

6 MR. GUNN: No objection.

7 THE COURT: That will come in. Thank you.

8 (Government's Exhibit 1128 was received)

9 BY MS. DONAHUE:

10 Q. What does this photograph show?

11 A. This is a view of the first set of stairs leading up to the
12 second story of the residence.

13 Q. Does that lead up to the landing?

14 A. Yes, it does.

15 Q. Can you take a look at Government's Exhibit 1127.

16 A. I have 1127.

17 Q. Did you take that?

18 A. Yes, I did.

19 MS. DONAHUE: Move 1127 into evidence.

20 MR. GUNN: No objection, Your Honor.

21 THE COURT: Admitted. Thank you.

22 (Government's Exhibit 1127 was received)

23 BY MS. DONAHUE:

24 Q. What does 1127 show?

25 A. That's a view from the landing looking down the stairs.

1 And if you walk down to the right, it would be the second set of
2 stairs that the prior exhibit was, I believe, 1128. They
3 connect.

4 Q. Now I would like you to take a look at 1129.

5 A. I have 1129.

6 Q. What is that?

7 A. This is a -- kind of an aerial view, for lack of better
8 words, of the open living space, what I guess we would formally
9 call a living room area, the first floor of the defendant's
10 residence in Phnom Penh.

11 MS. DONAHUE: Move 1129 into evidence.

12 MR. GUNN: No objection, Your Honor.

13 THE COURT: That's admitted. Thank you.

14 (Government's Exhibit 1129 was received)

15 BY MS. DONAHUE:

16 Q. I would like you to take a look at Government's
17 Exhibit 1131.

18 A. I'm sorry. I have 1131.

19 Q. What is that?

20 A. This is a close-up view of the TV and DVD that I just spoke
21 about a few minutes ago in the open space of the living room on
22 the first floor.

23 MS. DONAHUE: Move 1131 into evidence.

24 MR. GUNN: No objection, Your Honor.

25 THE COURT: Admitted. Thank you.

(Government's Exhibit 1131 was received)

BY MS. DONAHUE:

Q. I would like you to take a look at 1134.

A. I have 1134.

Q. What is that a photograph of?

A. This is a photo of the entrance to the downstairs bedroom of the defendant's residence in Phnom Penh.

Q. Move 1134 into evidence.

MR. GUNN: No objection, Your Honor.

THE COURT: Admitted. Thank you.

(Government's Exhibit 1134 was received)

BY MS. DONAHUE:

Q. Same thing, if you can take a look at Government's Exhibit 1135 and tell us, did you take that photograph?

A. Yes, I did.

Q. Move 1135 into evidence.

MR. GUNN: No objection, Your Honor.

THE COURT: Admitted. Thank you.

(Government's Exhibit 1135 was received)

BY MS. DONAHUE:

Q. When did you take Government's exhibits -- the photographs that are Government's Exhibits 1134 and 1135?

A. On June 17th, 2006.

Q. And is there anything in that photograph that is of particular significance to you?

1 A. Yes.

2 MR. GUNN: Objection. Calls for opinion, Your Honor.

3 THE COURT: Why don't you just lead him and ask him,
4 point him to whatever you want him to identify.

5 MS. DONAHUE: Okay.

6 Q. Is there a small or shiny object on the right-hand side of
7 the photograph sort of the light is catching on it near the
8 curtain?

9 A. Yes, there is.

10 Q. And did you subsequently take a photograph of that object?

11 A. Yes, I did.

12 Q. Did you do that on June 17th?

13 A. Well, it's shown in these two picture -- this picture a
14 little bit, but I took a full shot of the photograph -- I'm
15 sorry -- a full photograph of this object on June 20th, 2006.

16 Q. And if you can take a look at Government's Exhibit 1138.
17 Is Government's Exhibit 1138 that object?

18 A. Yes.

19 MS. DONAHUE: Move 1138 into evidence.

20 MR. GUNN: No objection, Your Honor.

21 THE COURT: Admitted. Thank you.

22 (Government's Exhibit 1138 was received)

23 BY MS. DONAHUE:

24 Q. Did the Cambodian National Police seize the baby oil that
25 is in that photograph?

1 A. Yes, they did.

2 Q. Can you take a look at Government's Exhibit 1183.

3 A. I have 1183.

4 Q. Do you recognize it?

5 A. I do.

6 Q. What is it?

7 A. This is the same baby oil bottle that was just shown in the
8 previous exhibits.

9 MS. DONAHUE: Move 1183 into evidence.

10 MR. GUNN: No objection.

11 THE COURT: Admitted. Thank you.

12 (Government's Exhibit 1183 was received)

13 BY MS. DONAHUE:

14 Q. Can you take a look at the photograph that is 1139.

15 A. I have 1139.

16 Q. Did you take that photograph?

17 A. Yes.

18 MS. DONAHUE: Move 1139 into evidence.

19 MR. GUNN: No objection.

20 THE COURT: Admitted. Thank you.

21 (Government's Exhibit 1139 was received)

22 BY MS. DONAHUE:

23 Q. Where is that?

24 A. This is located in -- on the first floor of the residence.

25 It's kind of -- not recessed but comes out in the L shape. It's

1 when you drive right into the residence, this is the first room
2 you would drive into. It would be like a garage if there wasn't
3 a pool table in there on our standards. It really isn't a
4 garage but that's the best I can describe it.

5 Q. Can you take a look at 1140.

6 A. I have 1140.

7 Q. Did you take that photograph?

8 A. Yes, I did.

9 MS. DONAHUE: Move 1140 into evidence.

10 MR. GUNN: No objection, Your Honor.

11 THE COURT: Admitted. Thank you.

12 (Government's Exhibit 1140 was received)

13 BY MS. DONAHUE:

14 Q. What are we looking at in 1140?

15 A. This is view of the front yard of the residence and the
16 clotheslines, fruit trees.

17 Q. I would like you to take a look at Government's
18 Exhibit 1141.

19 A. I have 1141.

20 Q. Do you recognize that?

21 A. I do.

22 Q. Did you take that picture?

23 A. I believe I did, yes.

24 MS. DONAHUE: Move 1141 into evidence.

25 MR. GUNN: No objection.

1 THE COURT: That will come in. Thank you.

2 (Government's Exhibit 1141 was received)

3 BY MS. DONAHUE:

4 Q. Can you tell us what 11 -- Government's Exhibit 1141 is a
5 picture of?

6 A. This is a detailed carving of a fish from wood.

7 Q. Where is this carving or where was this carving at the time
8 that you took the photograph?

9 A. This was located on a table in the open living space on the
10 first floor of the defendant's residence in Phnom Penh.

11 Q. If you can take a look at Government's Exhibit 1142.

12 A. I have 1142.

13 Q. What does that depict?

14 A. This is the stairwell leading down from the balcony of the
15 second floor or leading up to the balcony from the first floor,
16 down into the common area of the residence. You can get to the
17 main gate from there, the yard area.

18 MS. DONAHUE: Move 1142 into evidence.

19 MR. GUNN: No objection.

20 THE COURT: Admitted.

21 (Government's Exhibit 1142 was received)

22 BY MS. DONAHUE:

23 Q. Special Agent Phillips, is there a gate at the bottom of
24 these stairs?

25 A. Yes, there is a gate there but I don't know if it's exactly

1 at the very bottom or up a little bit.

2 Q. And do you know whether or not that gate locks?

3 A. I believe it did lock.

4 Q. And now Special Agent Phillips, the -- I would like you to
5 take a look at the box or the package of the various drugs that
6 were -- you should have all of them up there. We're not going
7 to go through each one.

8 I just want to ask you where did the Valium, Rohypnol,
9 morphine, codeine and Xanax and Temazepam all come from?

10 A. Most all of those particular drugs came from the
11 defendant's bedroom on the second floor. There were a few drugs
12 that I observed in the computer work room area as well, and a
13 smaller packet of drugs in a little Ziploc bag in one of the
14 other bedrooms.

15 Q. Where did the Viagra come from?

16 A. It came from the bedroom, the master bedroom on the second
17 floor.

18 Q. Now, Special Agent Phillips, on what dates did the
19 Cambodian National Police execute this search warrant at the
20 defendant's residence in Phnom Penh?

21 A. On June 17th, 2006 and June 20th, 2006.

22 Q. Now, when you prepared a report about the search in this
23 case, what date did you write down for the first date of the
24 search?

25 A. Initially I mistakenly wrote June 16th but I corrected

1 that.

2 Q. And was June 16th correct?

3 A. No.

4 Q. What was the first day of the search?

5 A. June 17th, 2006.

6 Q. Now, on June 17th of 2006, did the Cambodian National
7 Police take away all of this evidence that we have seen out
8 of -- take it away from the defendant's house?

9 A. No, ma'am, they did not.

10 Q. What did they do?

11 A. They took some of the evidence out on June 17th, 2006, and
12 then upon executing a second phase of the warrant on June 20th,
13 '06, then they took the rest of the evidence out of the
14 residence.

15 Q. So were you back at the residence on June 20th of 2006?

16 A. Yes, I was.

17 Q. And what did you -- generally, what did you observe the
18 Cambodian National Police do on June 20th of 2006?

19 A. On June 20th, '06 they resumed the second phase of the
20 search warrants, and they gathered their evidence and took it
21 out of the house and then transported it back to the CNP
22 headquarters, Cambodian National Police headquarters.

23 Q. When you say CNP do you mean Cambodian National Police?

24 A. Yes.

25 Q. Previously in this case did you testify at a hearing about

1 this search?

2 A. Yes, I did.

3 Q. And what day did you say it that it was conducted on?

4 A. On June 17th and by mistake I said June 19th. My error.

5 Q. And was the search conducted on June 19th?

6 A. No, it was not.

7 Q. Now, was the house secured in any way between the time the
8 Cambodian National Police left on June 17th and the time they
9 returned on June 20th?

10 A. Yes, it was.

11 Q. How do you know that?

12 A. I was -- I went back there on the 18th. I also saw the way
13 that the Cambodian National Police secured the residence was
14 intact.

15 Q. Now, I would like to turn your attention to July 6th of
16 2006. And on that date, did you have an opportunity to observe
17 the defendant in this case?

18 A. Yes, I did.

19 Q. At that time, did you observe any distinguishing marks on
20 his body?

21 A. Yes, I did.

22 Q. Can you please describe what you observed.

23 A. I observed some scars on his forehead and his hands, and I
24 observed a round red pea-size mark on his left upper thigh,
25 inner thigh.

1 Q. Finally I would like to turn your attention back to some
2 photographs, Government's Exhibit 2073, the first page only.

3 A. 2073. I have 2073.

4 Q. Do you recognize that?

5 A. Yes, I do.

6 Q. What is that?

7 A. That is a photograph of one of the children that was seen
8 in the house on June 17th, 2006.

9 MS. DONAHUE: Move 2073 into evidence.

10 MR. GUNN: No objection, Your Honor.

11 THE COURT: That will come in, thank you.

12 (Government's Exhibit 2073 was received)

13 BY MS. DONAHUE:

14 Q. Special Agent Phillips, who is that?

15 A. That is L.K.xxxxx or also known as L.K.xxx, L-K-x-x-x-x-x.

16 Q. Was she at defendant's residence on June 17, 2006 when you
17 arrived?

18 A. Yes, she was.

19 Q. I would like you to go back to the first binder and take a
20 look at Government's Exhibit 1072.

21 A. I have 1072.

22 Q. What is that?

23 A. It's a photograph of myself and one of the other children
24 that was involved in this investigation.

25 MS. DONAHUE: Move 1072 into evidence.

1 MR. GUNN: No objection, Your Honor.

2 THE COURT: Admitted. Thank you.

3 (Government's Exhibit 1072 was received)

4 BY MS. DONAHUE:

5 Q. Who is that?

6 A. A child -- the child is I.T., I-T-x-x.

7 Q. I would like you to take a look at Government's
8 Exhibit 1151.

9 MS. DONAHUE: I'm sorry. I move 1050 into evidence,
10 if I didn't already do that.

11 THE COURT: 1050?

12 MS. DONAHUE: I didn't look at my notes. 1072. I
13 apologize, Your Honor.

14 THE COURT: That's in.

15 BY MS. DONAHUE:

16 Q. Can you take a look at Government's Exhibit 1149.

17 A. I have 1149.

18 Q. What is that?

19 A. That's a photograph of myself and another child that was
20 involved in this investigation.

21 MS. DONAHUE: I move 1149 into evidence.

22 MR. GUNN: No objection, Your Honor.

23 THE COURT: Admitted. Thank you.

24 (Government's Exhibit 1149 was received)

25 BY MS. DONAHUE:

1 Q. Who is that?

2 A. This child's name is S.S.xxx, S-S-x-x-x-x-x.

3 Q. Can you take a look at Government's Exhibit 1151.

4 A. I have 1151.

5 Q. What is that?

6 A. This is a photograph of myself and U.S. Embassy Senior
7 Investigator, Suos Vansak -- S-U-O-S V-A-N-S-A-K -- and another
8 child involved in this investigation.

9 MS. DONAHUE: Move Government's Exhibit 1151 into
10 evidence.

11 MR. GUNN: No objection, Your Honor.

12 THE COURT: Admitted.

13 (Government's Exhibit 1151 was received)

14 BY MS. DONAHUE:

15 Q. When you said the other child involved in this
16 investigation, who is that?

17 A. This is L.K.xxxxx, better known as L.K.xxx, L-K-x-x-x-x-x.

18 Q. And finally, if you can take a look at Government's
19 Exhibit 1145.

20 A. I have 1145.

21 Q. What is that?

22 A. This is a photograph of myself and U.S. Embassy Senior
23 investigator Suos Vansak and another child involved in this
24 investigation.

25 MS. DONAHUE: Move Government's Exhibit 1145 into

1 evidence.

2 MR. GUNN: No objection.

3 THE COURT: Admitted.

4 (Government's Exhibit 1145 was received)

5 BY MS. DONAHUE:

6 Q. Who is that?

7 A. This is S.R.xxx, S-R-x-x-x-x-x.

8 Q. And finally, Special Agent Phillips, if I can have
9 Government's Exhibit 2089, which is just a large overhead put on
10 the easel.

11 Your Honor, I would ask permission to have him step
12 down and write on this diagram.

13 THE COURT: Any objection?

14 MR. GUNN: I don't believe so, Your Honor. Subject to
15 specific --

16 THE COURT: I can't see it. If there is no objection,
17 go right ahead.

18 THE WITNESS: Thank you.

19 BY MS. DONAHUE:

20 Q. Special Agent Phillips --

21 THE COURT: Let's make sure all the jurors can see it.
22 I don't need to see it unless there is a problem.

23 MR. GUNN: If I need to, may I step around,
24 Your Honor?

25 THE COURT: You certainly may.

1 MR. GUNN: Right now I am all right. There may be
2 parts that may be problematic.

3 BY MS. DONAHUE:

4 Q. Do you have a marker in your hand?

5 A. Yes, I do.

6 Q. Can you tell us what is -- 2089 is a sketch of -- or
7 diagram, at this point?

8 A. Yes. This is the first floor of the residence in Toulkork,
9 Phnom Penh, Cambodia.

10 Q. And just starting at the bottom of the diagram, there is a
11 large square, can you tell us what -- inside the building. Can
12 you tell us what that is and go ahead and label it.

13 A. This would be the -- like a storeroom. And this was the
14 pool table.

15 Q. Is that the pool table that we saw the photograph of?

16 A. Yes, ma'am.

17 Q. Can you show and label the front door to the house?

18 A. This is the front door.

19 Q. And can you show and label the living area that we saw the
20 photograph of earlier?

21 A. Yes. This is the living area.

22 Q. And can you show us where was the carved fish that we --
23 you saw the photograph of earlier? Where is that located?

24 A. The carved fish was right here.

25 Q. Can you label the television?

1 A. Television here.

2 Q. And to the left of the television, what is that room?

3 A. This was the downstairs quarters, bedroom quarters.

4 Q. And then turning your attention to the lines that
5 immediately go all the way down to the right of the bedroom,
6 what do those represent?

7 A. These are the stairs that we saw in one of the exhibits
8 leading from the balcony down to the driveway area adjacent to
9 the storeroom.

10 Q. And then going all the way over on the right-hand side of
11 the diagram, can you please label the kitchen and the dining
12 room?

13 A. Yes. This would be the kitchen and this would be the
14 dining room -- dining room.

15 Q. And Special Agent Phillips, does this house, when you were
16 there in June of 2006, have a fish pond?

17 A. Yes, it did.

18 Q. Where was that?

19 A. The fish pond was about right here.

20 Q. Could you please label that.

21 Your Honor, I would move Government's Exhibit 2089
22 into evidence.

23 MR. GUNN: No objection.

24 THE COURT: That will come in. Thank you.

25 (Government's Exhibit 2089 was received)

1 BY MS. DONAHUE:

2 Q. If you could put the other large diagram, Government's
3 Exhibit 290 up on the easel, please.

4 THE COURT: Is that 2090?

5 MS. DONAHUE: I'm sorry, Your Honor. Thank you, 2090.

6 THE WITNESS: 2090 is up.

7 BY MS. DONAHUE:

8 Q. What --

9 A. Sorry. Upside down.

10 Q. Upside down. Thank you.

11 A. My apologies.

12 Q. Now that it's right side up, what does that sketch -- what
13 does that represent?

14 A. This is the upstairs section of the residence in Toulkork,
15 Phnom Penh, Cambodia.

16 Q. Starting over on the right-hand side of that diagram, what
17 is that room?

18 A. This is the master bedroom.

19 Q. Can you please label the closet and the bed and the
20 nightstand and the other table or desk that was in that room and
21 the bathroom.

22 Can you also, please, show the jury and label the
23 entrance to that room.

24 And can you also label the stairs.

25 A. Yes.

1 Q. And earlier you mentioned a massage table and we saw a
2 photograph that had some books, children's books on top of that.
3 Where is that table located?

4 A. The massage table was in the center.

5 Q. Can you also label where the rack was that had the red
6 towel on it.

7 Where is the second bedroom that was on the second
8 floor?

9 A. The second bedroom is located here.

10 Q. And where is the closet in that second bedroom?

11 And can you show where that wraparound balcony is
12 located?

13 A. Yes. The wraparound balcony is the dotted line.

14 Q. And finally going around, can you show where the office or
15 work room, as you refer to it, was located?

16 A. Yes.

17 Q. And what is the open area that's right in front of that
18 office?

19 A. This is part of the balcony.

20 Q. And was there any furniture on that balcony?

21 A. Yes. There was a table. And a hammock somewhere. I don't
22 remember exactly where the hammock was but I am just going to
23 write down "Hammock."

24 Q. And then finally can you label the lines that are over on
25 the far left of that diagram?

1 A. These are the stairs.

2 MS. DONAHUE: Your Honor, we move Government's
3 Exhibit 2090 into evidence.

4 MR. GUNN: No objection.

5 THE COURT: Admitted. Thank you.

6 (Government's Exhibit 2090 was received)

7 MS. DONAHUE: At this time we have no further
8 questions for Special Agent Phillips.

9 THE COURT: Thank you. Cross-examination?

10 MR. GUNN: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. GUNN:

13 Q. You testified about searches at Mr. Pepe's house on
14 June 17th, 2006 and June 20th, 2006?

15 A. Did you say through or -- I'm sorry.

16 Q. No. "And."

17 A. Yes, sir, I did.

18 Q. And Mr. Pepe was arrested on June 17, 2006; correct?

19 A. Mr. Pepe was arrested on the 17th of June.

20 Q. So he was in custody from that point?

21 A. Yes, he was.

22 Q. I would like you to look at one other Government Exhibit.
23 Would you look at Government Exhibit 1076. If I could get my
24 copy out, Your Honor.

25 THE COURT: Sure.

1 BY MR. GUNN:

2 Q. Do you have that in front of you?

3 A. Yes, sir, I do.

4 Q. Do you recognize that?

5 A. Yes, sir, I do.

6 Q. That's another photograph you took, correct?

7 A. I would have to look at the properties, but I believe it
8 was.

9 Q. And that's a photograph of Mr. Pepe's SUV or vehicle that
10 he had at the house; correct?

11 A. Yes, it is.

12 MR. GUNN: Your Honor, I would offer it into evidence.

13 MS. DONAHUE: No objection.

14 THE COURT: That will come in. Thank you.

15 (Government's Exhibit 1076 was received)

16 BY MR. GUNN:

17 Q. That's the vehicle there; right?

18 A. Yes, sir.

19 Q. You were also at the house on June 18th, 2006, weren't you?

20 A. I was there on the 18th of June.

21 Q. You were there with a number of other American agency
22 representatives and representatives of one or more of the
23 non-governmental organizations which had been involved in the
24 investigation; correct?

25 A. I was -- I was there with a couple other people, yes.

1 Q. Some of those were other American representatives; correct?

2 A. Yes, there was one -- two.

3 Q. And some of them were NGO representatives; correct?

4 A. I believe one. I believe.

5 Q. And your understanding was that the Cambodian police were
6 going to be back that day to complete the search; right?

7 A. That was my initial belief, yes.

8 Q. They had sealed the house the day before and they told you
9 they were going to come back the next day; right?

10 A. Yes, they did.

11 Q. But they never showed up that day, did they?

12 A. No, they did not.

13 Q. At least while you were there they didn't show up; correct?

14 A. That's correct.

15 Q. You weren't there the whole day, though?

16 A. No, sir, I wasn't.

17 MR. GUNN: Your Honor, I would like to have some
18 exhibits which I have premarked placed before the witness.

19 THE COURT: All right.

20 MR. GUNN: They are Defense Exhibits 1010 through
21 1015 -- I'm sorry -- 510 through 515.

22 THE COURT: Okay.

23 MR. GUNN: If I could approach with the originals and
24 a set of copies for the Court.

25 THE COURT: You may. Does the Government have copies?

1 MR. GUNN: I just handed them to them.

2 Q. Agent Phillips, first I would like you to look at Defense
3 Exhibit -- strike that.

4 First of all, look at all six photos there. Do you
5 have them in front of you?

6 A. I do, sir.

7 Q. Those were all photos that were taken at the house on
8 June 18th, correct?

9 A. Yes, sir.

10 Q. And --

11 MR. GUNN: Your Honor, I would offer Defense
12 Exhibits 510 through 515 into evidence.

13 MS. DONAHUE: No objection.

14 THE COURT: Those will come in. Thank you.

15 (Defendant's Exhibits 510 through 515 were received)

16 BY MR. GUNN:

17 Q. Is this Exhibit 510? There are exhibit tags on the back.

18 A. Yes. This is Exhibit 510.

19 Q. For the record, Your Honor, that is the one with
20 "P-6170234" at the bottom.

21 THE COURT: All right. I don't want to interrupt you,
22 so do you want to break now or five minutes from now?

23 MR. GUNN: Probably now is better than five minutes,
24 Your Honor.

25 THE COURT: Okay, ladies and gentlemen, don't talk

1 about the case or form or express any opinions about the case
2 until it's finally submitted to you. We will take a 15 minute
3 break.

4 (Recess taken)

5 (Jury Out)

6 MS. DONAHUE: Your Honor, before the jury comes back,
7 we would ask if after Special agent Phillips' testimony is
8 completed, if the Court could take a break regardless of the
9 time. The next witness after him will be a child and we need to
10 set up with our video as required by the statute. And we would
11 also wonder if the Court might ask the or tell the jury that the
12 law requires the adult attendant who is accompanying the child
13 be videotaped, lest otherwise the jury wonder why there is
14 someone sitting in the corner with a video camera, which is
15 unusual.

16 THE COURT: Okay.

17 (Jury In)

18 THE COURT: I apologize again. During the break I got
19 another question from my jurors. I am sorry this is so choppy.
20 If it makes you feel any better -- and I hope it doesn't -- this
21 is stressing me out. And it's also problematic for my clerk and
22 my court reporter, but we are doing the best we can and I
23 appreciate your patience.

24 Mr. Gunn, you may continue.

25 Sir, you are still under oath.

1 MR. GUNN: Thank you, Your Honor.

2 Q. Going back to Defense Exhibits 510 through 515, do you
3 still have those in front of you?

4 A. I do.

5 Q. And this is Defense Exhibit 510, is it not?

6 A. Yes, sir.

7 Q. That's a photo of you and other people who went with you
8 sitting on the balcony of the house on June 18th, 2006; is that
9 correct?

10 A. That's not a photo of me but it is a photo of other people.

11 Q. The ones who went with you to the house; correct?

12 A. Only a few of them went to the house with me.

13 Q. You were waiting for the Cambodian police; correct?

14 A. Yes.

15 Q. Going to Defense Exhibit 511, that's another photo of some
16 of the people on the balcony; correct?

17 A. Yes.

18 Q. And it shows one of the doors with the type of seal that
19 the Cambodian police put on it; right?

20 A. Yes, it does.

21 Q. That's where my pen is pointing; correct?

22 A. Yes.

23 Q. Going to Defense Exhibit 512, that's a photo of one of the
24 other doors to the house; right?

25 A. Yes, it is.

1 Q. And it also shows one of the doors with the same type of
2 seal on it where my pen is pointing; correct?

3 A. Yes, it does.

4 Q. Then going to Defense Exhibit 513, that's a photo of the
5 house, sort of most of the front of the house from back a ways
6 in the yard; right?

7 A. From the front yard, yes, sir.

8 Q. And it shows several of the doors in the house; correct?

9 A. Yes, it does.

10 Q. And it shows two of those doors, the one I'm pointing to
11 with my pen now and the one I'm now pointing to above it, have
12 that same type of seal on it; correct?

13 A. Yes, it does.

14 Q. But there is another door to the right under the awning,
15 isn't there?

16 A. Yes, to the storeroom.

17 Q. The storeroom is connected to the house; correct?

18 A. I'm sorry. I looked at the wrong one. What exhibit are
19 you looking at?

20 Q. Actually do you see where I zoomed in now on Defense
21 Exhibit 513?

22 A. Yes, I do.

23 Q. There is another door there where I'm pointing my pen;
24 correct?

25 A. Yes.

1 Q. And that door doesn't have a seal on it, does it?

2 A. No, it doesn't.

3 Q. In fact, it's completely open, isn't it?

4 A. It looks like it is, yes.

5 Q. And this picture was also taken on June 18, 2006; correct?

6 A. If you give me the P number, I would be happy to make sure
7 of that.

8 Q. It has a P number on it, right, on your copy there?

9 A. Can you give me the exhibit number, please?

10 Q. Exhibit 513.

11 A. This was taken on June 18th, yes, sir.

12 Q. Then going to Defense Exhibit 514, that's a photo of
13 another door to the house, isn't it?

14 A. Yes. That's to the storeroom.

15 Q. Also taken on June 18, 2006; correct?

16 A. Yes, sir.

17 Q. And that door also doesn't have a seal on it; correct?

18 A. It does not, no.

19 Q. Then going to Defense Exhibit 515, that's another door to
20 the house; correct?

21 A. Yes, sir.

22 Q. And it also doesn't have a seal on it, does it?

23 A. I don't see a seal, no.

24 Q. And all these photographs, Defense Exhibits 510 through
25 515, were taken on June 18, 2006; correct?

1 A. Yes, they were.

2 Q. That was the day you were waiting for the Cambodian
3 National Police; right?

4 A. Yes.

5 Q. But they didn't show up?

6 A. Well, there was one officer there guarding the house, but
7 the -- the contingent of people that I was waiting for did not
8 show up.

9 Q. But you weren't there the whole day?

10 A. No, I was there in the morning.

11 Q. Now, a number of medications were found in the search;
12 correct?

13 A. Yes, sir.

14 Q. You took those medications as evidence?

15 A. I did not take any evidence.

16 Q. They were taken as evidence?

17 A. The Cambodian National Police took them as evidence.

18 Q. And they were later given to you for use as evidence;
19 correct?

20 A. Not originally. They were given to me to see if he needed
21 medication while in Prasa Prison.

22 Q. They eventually were given to you to take as evidence;
23 right?

24 A. Yes, they were.

25 Q. And you passed them all to the agents who were handling the

1 case here in the United States; correct?

2 A. Yes, sir.

3 Q. Now, you identified on direct examination a pink-colored
4 bottle of baby oil that you found in the house on direct
5 examination, did you not?

6 A. Yes, I did.

7 Q. That is shown in Government Exhibit 1138; correct?

8 A. Yes, it is.

9 Q. And this is that exhibit; correct?

10 A. Yes, sir.

11 Q. And you actually requested that this be taken during the
12 search; right?

13 A. I asked if it was permissible to take it, yes, sir.

14 Q. And it wasn't in Mr. Pepe's bedroom, though, was it?

15 A. No, it wasn't.

16 Q. It wasn't even on that floor, was it?

17 A. No, sir, it was not.

18 Q. It was in the downstairs bedroom; correct?

19 A. It was in the downstairs bedroom.

20 Q. Would you look at Government Exhibits 1152 and 1153. Those
21 are photographs of a bag that was found in Mr. Pepe's house;
22 correct?

23 A. Yes, sir.

24 Q. The same bag as is shown in Government Exhibit 1104;
25 correct?

1 Actually, Your Honor, I would offer 1152 and 1153 into
2 evidence.

3 MS. DONAHUE: No objection.

4 THE COURT: Those will come in. Thank you.

5 (Government's Exhibits 1152 and 1153 were received)

6 THE WITNESS: Yes, sir.

7 BY MR. GUNN:

8 Q. This is Government Exhibit 1152; correct?

9 A. Yes.

10 Q. And the bag has some things inside it; right?

11 A. Yes.

12 Q. That includes two ropes or pieces of cord?

13 A. Yes.

14 Q. And a roll of tape?

15 A. Yes.

16 Q. And a red-and-white box sort of hidden there under the
17 ropes?

18 A. That's true.

19 Q. And then some sort of little green-and-yellow thing sort of
20 right in here; right?

21 A. Yes.

22 Q. Would you now look at Government Exhibit 1153. That's
23 this, correct?

24 A. Yes.

25 Q. That's another photo of the bag?

1 A. Yes, it is.

2 Q. And it has the ropes in it?

3 A. Yes.

4 Q. And the roll of tape?

5 A. Yes.

6 Q. Now it also has a condom in it; correct?

7 A. Yes.

8 Q. And a plastic Ziploc bag with some pills of some sort; is
9 that true?

10 A. That's also true.

11 Q. The condom wasn't in the bag when it was first found, was
12 it?

13 A. That's true.

14 Q. And the plastic Ziploc bag with the pills wasn't in it when
15 it was first found, was it?

16 A. That's correct also.

17 Q. And the little yellow-and-green thing that was in
18 Government photograph, 1152, the prior photograph, wasn't in the
19 bag when it was first found either, was it?

20 A. That's true.

21 Q. Finally, the red-and-white box that was in the bag in 1152
22 wasn't in it when it was first found, was it?

23 A. That's true.

24 Q. In fact, you took a photo that -- that red-and-white box is
25 actually medication, isn't it?

1 A. Is that the Codalgin?

2 Q. Would it refresh your memory if you saw a photograph?

3 A. Yes, sir, it would.

4 MR. GUNN: Your Honor, could I mark an exhibit as 517?

5 THE COURT: You may.

6 (Defendant's Exhibit 517 was marked)

7 MR. GUNN: Your Honor, I am handing Government counsel
8 a copy and if I could approach with the original and a copy for
9 the Court.

10 Q. Would you look at Government Exhibit 517. Do you have that
11 in front of you?

12 A. Yes.

13 Q. That's a photograph you took of this Codalgin Forte
14 medication in the house; correct?

15 A. Is it a P number?

16 Q. Did you take a photograph like that of the medication?

17 A. I did take photos, but I need to know -- to answer your
18 question thoroughly, I need to know if it was a P number.

19 Q. Let me rephrase the question.

20 Is this a photograph of Codalgin Forte medication that
21 you saw in the house?

22 A. Yes, sir.

23 Q. And that box is the same as the box that is in Government
24 Exhibit 1152; correct?

25 THE COURT: Are you asking if the boxes look the same

1 or whether this is the identical type --

2 MR. GUNN: Same type of box. Thank you.

3 THE WITNESS: Both the box and the bag is red and
4 white in color.

5 BY MR. GUNN:

6 Q. And it has the word "medicine" in the same place; right?

7 A. That's correct.

8 Q. So it appears to be the same type of box; correct?

9 A. It appears that's so, yes.

10 MR. GUNN: Your Honor, I would offer Government
11 Exhibit -- Defense Exhibit 517 into evidence.

12 MS. DONAHUE: No objection.

13 THE COURT: I will admit that. Thank you.

14 (Defendant's Exhibit 517 was received)

15 BY MR. GUNN:

16 Q. Going back to your testimony yesterday, you testified about
17 this yellow bag; right?

18 A. Yes, I did.

19 Q. And you testified that there were two types of rope or
20 cord, the tape, and a piece of wire in the yellow bag; right?

21 A. Yes, I did.

22 Q. You actually volunteered the part about the wire on your
23 own when you happened to see it in there, didn't you?

24 A. Yesterday, yes.

25 Q. That evidence wasn't in American custody during the whole

1 time after it was seized, was it?

2 A. No, it was not.

3 Q. It was in the custody of the Cambodian police, wasn't it?

4 A. That's true.

5 Q. You don't have any personal knowledge of what they added to
6 the bag or took out, do you?

7 A. I only know what I saw on the day of the warrants.

8 Q. And what you didn't see in the bag was any wire; isn't that
9 correct?

10 A. I don't recall seeing any wire on that day.

11 Q. In fact, there was no wire in the bag on that day, was
12 there?

13 A. I don't know. There could have been. I just didn't see
14 it.

15 Q. Would it refresh your memory if you saw part of the search
16 warrant video where the bag was found?

17 A. Yes.

18 MR. GUNN: Your Honor, I have Defense Exhibit 105
19 already in our computer. It's a copy of the same search video
20 as the Government Exhibit. If I could just play that one, that
21 would be quicker.

22 THE COURT: You may.

23 MR. GUNN: I am going to switch over to your computer,
24 Your Honor.

25 THE COURT: Good luck.

1 MR. GUNN: Bingo. If I could, Your Honor, for the
2 record, we will start this video at 34:45 and I am going to ask
3 Mr. Brown to play it through 35:30. It's CD 2 on Defense
4 Exhibit 105, which is the June 17th search video.

5 THE COURT: All right.

6 (Whereupon, the video was played for the jury)

7 MR. GUNN: Could we pause it please, Mr. Brown.

8 Q. That's the same yellow bag; correct?

9 A. Yes, it was.

10 Q. If we could continue, Mr. Brown.

11 (Whereupon, the video was played for the jury)

12 MR. GUNN: Can we pause it Mr. Brown.

13 Q. There is no wire anywhere there; correct?

14 A. I don't see it from this angle.

15 Q. And people are adding in condoms and KY jelly to be taken
16 in a photograph; correct?

17 A. Well, I don't know if that was their purpose.

18 Q. Well, they are throwing the condoms and the KY jelly in
19 there with the rope and the tape; right?

20 A. That's what I saw. I saw condoms and KY jelly on the bed.

21 Q. And Government's Exhibits 1152 and 1153 someone put
22 additional items in the bag for a photograph; correct?

23 A. I assume so. I don't know. But they're there.

24 Q. Either you took those photographs or someone you designated
25 to take them took them; right?

1 A. No. I took the photos.

2 Q. So those items were put in there for you to take the
3 photos; correct?

4 A. They weren't put in there for me to take the photos. I
5 took the photos.

6 Q. Different items were moved in and out from one photo to the
7 next when you took those photos; correct?

8 A. I guess so, yes.

9 MR. GUNN: By the way, if we could finish playing the
10 video, Your Honor, just so it's all the way through. We will
11 stop at 3530, Your Honor, for the record.

12 (Whereupon the video was played for the jury)

13 MR. GUNN: That's all for the video, Your Honor.

14 THE COURT: All right.

15 MR. GUNN: Why don't we skip back to the ELMO.

16 Q. By the way, this bag didn't say "rape kit" on it, did it?

17 A. No.

18 Q. And this tape doesn't look any different than any other
19 masking tape or duct tape of that type, does it?

20 A. No. It's tape that you can buy anywhere.

21 Q. And the rope or cord doesn't look any different than any
22 other rope or cord, does it?

23 A. No.

24 Q. By the way, this bag had been in the custody of the
25 Cambodian National Police for several days before you took

1 custody of it; correct?

2 A. Yes. That's true.

3 Q. You testified about the hard drive of the computer that is
4 identified as Government Exhibit 1275 on direct examination;
5 correct?

6 A. Yes, I did.

7 Q. And you identified that as the hard drive because it had
8 your initials on it?

9 A. That's true.

10 Q. And it had a date on it?

11 A. Yes, it did.

12 Q. And it had who you received it from on it?

13 A. Yes, it did.

14 Q. And who you received it from was the Cambodian National
15 Police; correct?

16 A. That's true.

17 Q. It was in their sole custody before you received it; right?

18 A. That's true.

19 Q. Would you look at Government Exhibit 1124. That's the
20 stack of \$1 bills that you testified on direct examination;
21 correct?

22 A. Yes, sir.

23 Q. There is a lot of poverty in Cambodia; correct?

24 A. Yes, there is a lot of poverty in Cambodia.

25 Q. If you are an American and you are on the streets of

1 Cambodia, people often approach asking for money; correct?

2 A. That's very true.

3 Q. So it's very common for someone to have a number of \$1
4 bills so they can give people a dollar if they're approached
5 correct?

6 A. It's more common to give in riel, but you can give dollar
7 bills, too.

8 Q. In fact, you suggested to us before we went over to
9 Cambodia on an investigation that we have a number of \$1 bills
10 so that we could have those to give people if we were
11 approached; right?

12 A. Or riel, yes.

13 Q. Would you now look at Government -- actually not look at.
14 Do you have Government Exhibit 1177 up in front of you? It's a
15 map of Phnom Penh.

16 A. It must be back in the exhibit area.

17 MR. GUNN: Could I have it placed in front of Agent
18 Phillips, Your Honor?

19 THE WITNESS: I have 1177.

20 BY MR. GUNN:

21 Q. That's the map of Phnom Penh; right?

22 A. Yes.

23 Q. Right?

24 A. Yes.

25 Q. And this is a copy of the back of the map; right?

1 A. Yes, it is.

2 Q. You testified about how it says "Sex with children is a
3 crime"; right?

4 A. That's correct.

5 Q. And this is actually about a number to call if you have
6 information to give the police; right?

7 A. When it works, yes.

8 Q. Well, that wasn't my question. This section or this ad on
9 the map is about a number to call the police when you have
10 information; right?

11 A. Yes, that is true.

12 Q. But it's not the only thing on this map; right?

13 A. On the back side of the map?

14 Q. It's not the only thing on the map; right?

15 A. No. It's a map.

16 Q. Well, and there is a number of other different
17 advertisements and things on the map; right?

18 A. You asked me not to open it so I haven't opened it.

19 Q. Well, have you looked at it before, Agent Phillips? Don't
20 open it now. You've looked at this before; right?

21 A. Yes, I have.

22 Q. You know what's on it; right?

23 A. There are advertisements on it, I believe, for restaurants
24 maybe.

25 Q. So you can answer my question without opening it, can't

1 you?

2 A. I can but not thoroughly.

3 Q. Well, I didn't ask you -- I'll withdraw that, Your Honor.

4 Now that we have established that, will you open the
5 map and show it to the jury.

6 A. May I stand?

7 (Witness shows map to the jury)

8 Q. So that sex-with-children advertisement or whatever we
9 wanted to call it that you testified about is one out of
10 probably 50 on the map, isn't it?

11 A. That's true.

12 Q. You also testified on direct examination -- you can put
13 that away now -- about several newspaper clippings that were
14 found in Mr. Pepe's house, didn't you, that had to do with
15 pedophilia or sex trafficking issues in Cambodia; right?

16 A. Yes.

17 Q. Those are Government Exhibits 1234 through 1237?

18 A. Would you like me to look?

19 Q. If you don't remember, please look.

20 A. 1234?

21 Q. Through 1237.

22 A. I do remember the exhibits. And they do begin with 1234.

23 Q. There are four newspaper clippings, right -- 1234, 1235,
24 1236 and 1237?

25 A. Yes.

1 Q. Those weren't the only newspaper clippings found in
2 Mr. Pepe's house, were they?

3 A. No.

4 MR. GUNN: Your Honor, could I have marked an original
5 evidence bag in the Government's possession Defense Exhibit 520?

6 THE COURT: It's in the Government's possession and
7 it's Defense 520?

8 MR. GUNN: I believe it's right here. Mr. Wong just
9 pointed to it, Your Honor.

10 THE COURT: Okay.

11 BY MR. GUNN:

12 Q. That's an evidence bag containing evidence that was found
13 in Mr. Pepe's house in this case; correct?

14 A. That's true.

15 Q. It's the same evidence bag that you retrieved or someone
16 retrieved, Government's Exhibit 1234, 1235, 1236 and 1237 out
17 of; correct?

18 A. That's also true.

19 Q. And that same bag has several other newspaper clippings in
20 it, doesn't it?

21 A. Yes, it does.

22 Q. Would you open the bag and pull those out. One of those is
23 a newspaper clipping that's just a, quote, police blotter,
24 unquote; correct?

25 A. Which one?

1 Q. Tell me if there is one in there like that.

2 A. I see 1, 2, 3, 4, 5 clippings.

3 Q. That wasn't my question. My question just now is one of
4 those is a police clipping -- is a clipping that says "Police
5 Blotter" on it; right?

6 A. Police blotter? I'm not seeing police blotter. If you can
7 help me out and direct me to which one, I would be happy to
8 answer you.

9 MR. GUNN: Could I approach, Your Honor?

10 THE COURT: Sure.

11 THE WITNESS: Is it in this bag? I don't see it.

12 BY MR. GUNN:

13 Q. It should be in there.

14 A. I'm not seeing it, sir. I'm sorry.

15 Q. All right. Now it's missing, so . . .

16 There are five newspaper clippings in there, though,
17 correct?

18 A. Yes, sir, there are.

19 Q. One of them is about seven officials convicted under iron
20 fists acquitted?

21 A. Yes, sir.

22 Q. That's about some Cambodian police officers who were
23 convicted of taking bribes for letting robbery suspects go?

24 A. Police or the Court? I'm not sure which one it was. There
25 was some judges involved as well and prosecutors.

1 Q. This one was about police; correct?

2 A. A judge as well.

3 Q. And then there is one about a waitress being shot by police
4 officers?

5 A. Yes. For serving too slowly.

6 Q. And then there is one about how bar guards should police
7 the police?

8 A. Yes, sir, there is.

9 Q. And then this is one with an article about prostitutes not
10 liking NGO shelters?

11 A. That's correct.

12 Q. And then there is one about the hazards for beer girls;
13 correct?

14 A. That's true as well.

15 Q. And these were in the same evidence bag as Government's
16 Exhibits 1234 through 1237; correct?

17 A. That's true.

18 Q. And that's because those newspaper clippings were all found
19 together; correct?

20 A. I don't know if they were all found together or not.

21 Q. Taken together, it's a set of newspaper clippings about
22 crime and police problems in Cambodia, isn't it?

23 A. Amongst other paperwork in here.

24 Q. These weren't the only newspaper clippings, in fact, that
25 were found in the house, were they, the ones in this evidence

1 bag?

2 A. Clippings or complete papers?

3 Q. Clippings.

4 A. Clippings. I don't recall how many more clippings there
5 were.

6 MR. GUNN: Your Honor, could I -- first of all,
7 Your Honor, could I offer Defense Exhibit 520 -- could I offer
8 this exhibit as Defense Exhibit 520, just the newspaper
9 clippings in it and the evidence bag?

10 MS. DONAHUE: No objection.

11 THE COURT: All right. That will come in.

12 (Defendant's Exhibit 520 was received)

13 MR. GUNN: Your Honor, if I could approach and have
14 marked Defendant's Exhibit 521 through 523.

15 THE COURT: All right.

16 (Defendant's Exhibits 521 through 523 were marked)

17 MR. GUNN: With an extra copy for the Court and
18 originals with exhibit tags.

19 Q. Would you look at Defense Exhibits 521, 522 and 523.

20 A. Okay.

21 Q. Those are copies of three other newspaper clippings;
22 correct?

23 A. Yes.

24 Q. And those also were found in Mr. Pepe's house; correct?

25 A. I don't remember seeing these, but they came out of the

1 bag.

2 Q. They were in the evidence that was produced to the Defense
3 by the Government in this case; correct?

4 A. Yes.

5 Q. And there were even complete newspapers found in Mr. Pepe's
6 house that were seized; isn't that true?

7 A. That is true.

8 MR. GUNN: Your Honor, if I could offer first of all
9 521 through 523 into evidence.

10 MS. DONAHUE: No objection.

11 THE COURT: Admitted. Thank you.

12 (Defendant's Exhibits 521 through 523 were received)

13 MR. GUNN: Your Honor, if I could have another exhibit
14 marked for identification, if I could approach, as 524?

15 THE COURT: You may.

16 (Defendant's Exhibit 524 was marked)

17 MR. GUNN: It's in file folders because it's somewhat
18 thick, Your Honor. A copy for the court. An original.

19 Q. Would you look at Defense Exhibit 524.

20 A. Yes.

21 Q. That's a group of complete newspapers that were found in
22 Mr. Pepe's house, isn't it?

23 A. Yes, sir, it is.

24 Q. And it's not just the most recent dates that maybe hadn't
25 been thrown away, was it?

- 1 A. Do you want me to go back and see how far it goes?
- 2 Q. There is -- why don't we go through them? There is one for
- 3 February 20th; correct?
- 4 A. Yes.
- 5 Q. And there is one for February 22nd; correct?
- 6 A. Yes.
- 7 Q. There is one for February 27th?
- 8 A. Correct.
- 9 Q. There is one for February 28th?
- 10 A. True.
- 11 Q. One for March 1st?
- 12 A. Yes.
- 13 Q. One for March 2nd?
- 14 A. Yes.
- 15 Q. One for March 3rd?
- 16 A. Yes.
- 17 Q. One for March 6?
- 18 A. Yes.
- 19 Q. One for March 7th?
- 20 A. Yes.
- 21 Q. One for March 8th?
- 22 A. Yes.
- 23 Q. One for March 9th?
- 24 A. Yes.
- 25 Q. One for April 6th?

1 A. Correct.

2 Q. One for April 12th?

3 A. Yes.

4 MR. GUNN: Your Honor, I would offer Defense
5 Exhibit 524 into evidence.

6 MS. DONAHUE: Object on relevance grounds.

7 THE COURT: I'll admit it.

8 MR. GUNN: I'm sorry, Your Honor?

9 THE COURT: Admitted.

10 (Defendant's Exhibit 524 was received)

11 BY MR. GUNN:

12 Q. These are just the newspaper clippings in newspapers that
13 you selected out of what the Cambodian police had at their
14 office after the search; correct?

15 A. These were the papers that were contained in the evidence
16 that they seized.

17 Q. The evidence -- well, you didn't look at the evidence that
18 they seized right after they seized it, did you?

19 A. No, I didn't.

20 Q. You looked at the evidence that they seized several days
21 later; correct?

22 A. I looked at it on -- some of it on June 18th, the day
23 after. I believe some of it possibly on the 19th. And then
24 again after it was seized on the 20th.

25 Q. And so you don't know what the Cambodian police kept;

1 right?

2 A. They kept whatever I saw when I went through it.

3 Q. But you don't know what they kept and what they originally
4 seized?

5 A. It was not my warrant, so that's true.

6 Q. And you didn't actually see them seize every single thing
7 they seized, did you?

8 A. No. I couldn't -- I could not have seen every single item
9 that was seized at the time they were seizing it.

10 Q. Now, you also testified on direct about observing a red
11 pea-shaped mole on Mr. Pepe's inner thigh, you claimed, when you
12 met with him on July 6th?

13 A. That's true.

14 Q. That was after interviews during which at least three of
15 the girls who said Mr. Pepe had abused them said he had a mole
16 on his thigh; right?

17 A. That's true.

18 Q. So you believed at that point in the investigation that a
19 mole on the thigh was important, didn't you?

20 A. I thought it was relevant.

21 Q. Did you ever take a photo of the mole you're saying you
22 observed?

23 A. We're not allowed to take cameras into the prison.

24 Q. Did you ever ask the Cambodian authorities if you could
25 take a photo of it?

1 A. We were told that prior to coming into the prison, we were
2 not allowed to bring electronic devices or cameras into the
3 prison.

4 Q. Did you ever tell them that there was important evidence
5 that you needed to take a photo of and you would like to take a
6 photo of?

7 A. No. Because I know those rules and they do not bend the
8 rules.

9 Q. Did you ever ask them to take a photo of it?

10 A. No, I did not.

11 Q. Were you at court appearances where Mr. Pepe was sometimes
12 in Cambodia?

13 A. I'm sorry. Say that again.

14 Q. Did you ever go to any court appearances where Mr. Pepe was
15 present in Cambodia?

16 A. No.

17 Q. Were there court appearances in Cambodia for Mr. Pepe?

18 A. I never participated in that so I would imagine there were.

19 Q. Could you have gone to those?

20 A. I guess I could have if I wanted to, yes.

21 Q. Did you think about going there to take a photo of this
22 mole that you claim you saw?

23 A. I'm not claiming I saw it. I did see the mole.

24 Q. You have testified about a couple of mistake you made about
25 dates previously in this case; correct?

1 A. That's true. I did.

2 Q. You have also left things out of reports when it was
3 helpful to leave them out, haven't you?

4 A. No.

5 Q. Well, on June 16th, 2006, you interviewed one of the
6 alleged victims in this case named I.T.; correct?

7 A. That's true.

8 Q. You showed her a photograph of Mr. Pepe; correct?

9 A. That's true.

10 Q. And she said that wasn't the man; correct?

11 A. That's true.

12 Q. Now, in this photo, Mr. Pepe had a mustache; right?

13 A. That's true as well.

14 Q. But that wasn't the only reason I.T. gave that he wasn't
15 the man, was it?

16 A. I would have to go through the transcript.

17 Q. She also said his nose was longer, didn't she?

18 A. I believe she said a sharp nose.

19 Q. And then you wrote a report about that interview; right?

20 A. I did.

21 Q. That's an official government report?

22 A. It was a government report and it was official.

23 Q. It was several pages long?

24 A. Yes.

25 Q. It's intended to be a complete and accurate report to sort

1 of lay out what happened or what was said?

2 A. Yes, it is.

3 Q. You didn't put anything in that report about I.T. being
4 shown a picture of Mr. Pepe and saying that wasn't the man, did
5 you?

6 A. I did not, no.

7 MR. GUNN: Your Honor, I don't have any further
8 questions for Agent Phillips at this time subject to possibly
9 recalling him depending on what additional testimony from other
10 witnesses there may be.

11 THE COURT: I'm sure he'll be around.

12 MR. GUNN: I expect so, Your Honor.

13 MS. DONAHUE: He will be.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MS. DONAHUE:

17 Q. Special Agent Phillips, do you have in front of you the
18 Defense Exhibits 510 through 13, that initial set of photos?

19 A. I do.

20 Q. If you could take a look at Defense Exhibit 510.

21 A. I have 510.

22 Q. What date is this taken?

23 A. This photo was taken on June 18th, 2006.

24 Q. Can you identify the people who are in this photograph; and
25 I will try and zoom in a little more.

1 A. I'm sorry. Yes, I can.

2 Q. Let's start with the man in the red ball cap. Who is that?

3 A. That is Andrew Simpson. He is the Assistant Regional
4 Security Officer of the U.S. Embassy.

5 Q. Is that the U.S. Embassy in Phnom Penh, Cambodia?

6 A. Yes, it is.

7 Q. To his left, who is the gentleman here with the dark hair
8 that I'm pointing to?

9 A. That's Senior Investigator Suos, S-U-O-S, Vansak,
10 V-A-N-S-A-K of the U.S. Embassy Regional Security office.

11 Q. And moving to the right, who is the man I'm pointing to
12 here in the blue T-shirt?

13 A. I believe that is the representative from the International
14 Justice Mission, Ron Dunne, D-U-N-N-E.

15 Q. Is the International Justice Mission a non-governmental
16 organization?

17 A. Yes, it is.

18 Q. Who is the man in the white shirt with the dark hair in
19 front of Mr. Dunne?

20 A. I'm not sure of his name but I believe he was the
21 contingent of the Cambodian National Police assigned to be at
22 that residence.

23 Q. And then there are -- there is a woman immediately to his
24 left who appears to be sitting at that table. Who is that?

25 A. I believe that is the -- if it's the elder of the two --

1 which is why I'm wearing glasses -- is Sin, S-I-N, S-A-M-A-N-A,
2 and she is the house owner. I'm sorry.

3 Q. Who is Sin Samana?

4 A. She is the house owner.

5 Q. And who is the woman seated next to her to the left in the
6 photograph?

7 A. He I believe that her daughter Muth Piseth, M-U-T-H
8 P-I-S-E-T-H.

9 Q. When you returned to the defendant's house on June 18th,
10 what did you do?

11 A. I was waiting for the police, but I took the opportunity to
12 interview Sin Samana and Muth Piseth, the landlords, the owners
13 of the house.

14 Q. And those are two individuals who are seated at the table
15 there on the balcony?

16 A. Yes.

17 Q. If you can take a look at Defense Exhibit 511.

18 A. I have 511.

19 Q. What portion of the house is this a photograph of?

20 A. That's the entranceway to the computer room or the work
21 room on the upstairs balcony area.

22 Q. And is the door that has a seal over it the seal to that
23 work room?

24 A. That's one of the seals, yes.

25 Q. And do you know who are the people who are depicted or

1 partially depicted in the photograph?

2 A. It's my belief they are part of the contingent that was
3 assigned to guard the house.

4 Q. When you say a contingent assigned to guard the house, what
5 do you mean?

6 A. Representatives from the Cambodian National Police who were
7 assigned to ensure that there was no people coming or going into
8 that house where the evidence was contained.

9 Q. If you could take a look at Defense Exhibit 513, which is
10 also a photograph.

11 If I could also have Government's Exhibit 2090, the
12 large diagram of the first floor -- 2089, I am sorry -- put on
13 the easel.

14 A. Defense 513?

15 Q. Defense 513.

16 A. I have 513.

17 Q. I am zooming in on the door that you were shown on
18 cross-examination. Referring to -- referring to the diagram,
19 Government's Exhibit 2089, which is now on the easel, can you
20 show the jury what door is depicted in this photograph, Defense
21 Exhibit 513?

22 A. It would be this door.

23 Q. Is that the door that leads into the kitchen?

24 A. Yes.

25 Q. If you can go ahead and have a seat. Take a look at

1 Exhibit 514.

2 A. I have 514.

3 Q. Do you know what that is the door to?

4 A. It's the door to the storage room, I believe.

5 Q. Where is that storage room located?

6 A. It's as you go in the door to the left.

7 Q. And can you show the jury on the diagram? Government's
8 Exhibit 2089.

9 A. That would be right here.

10 Q. Is that right behind the fish pond?

11 A. Yes.

12 Q. And is that also the door -- is there a door, just for
13 accuracy, that leads into that room where the pool table was
14 located?

15 A. Yes. These double doors.

16 Q. All right.

17 And if you want to go ahead and take a look at Defense
18 Exhibit 515.

19 A. I have 515.

20 Q. Do you know where in the house that door is?

21 A. Actually that's kind of hard for me to tell on this
22 particular shot. I can't really tell on this shot. I know it's
23 by the balcony.

24 Q. You're not sure based on this photograph where that was
25 taken?

1 A. Right.

2 Q. And -- okay.

3 You don't know whether -- you don't know whether
4 that's a door leading into the office area?

5 A. The office? May I look at the other photos?

6 Q. Yes. Yes.

7 A. No. It's not to the office.

8 Q. It's not into the office area?

9 A. No.

10 Q. Okay.

11 Now I would like you to take a look at Government
12 Exhibits 1152 and 53. They're photographs that are in a binder.

13 A. I have 1152 and 3.

14 Q. Starting with 1152, what does that show?

15 A. It shows a yellow bag with rope, two different types of
16 rope, medicine and masking tape and some yellow-and-blue color
17 item.

18 Q. And 1152, you were asked about this photograph on
19 cross-examination.

20 Do you know when this photograph was taken?

21 A. I'll have to look in my sheets. Do you have the P number
22 by -- perhaps? The photograph number?

23 Q. No. But if you take a look at 1153 and maybe also answer
24 the same question, when that was --

25 A. May I take a moment and figure it out?

1 Q. Yes. Yes.

2 A. Okay.

3 Q. When was Government's Exhibit 1152 taken?

4 A. It was taken on June 19th, 2006 at about 9:30 in the
5 morning.

6 Q. And when was Government's Exhibit 1153 taken?

7 A. June 19th, 2006, approximately 9:31 in the morning.

8 Q. Do you know where these photographs were taken?

9 A. Yes, I do.

10 Q. Where is that?

11 A. At the Cambodian National Police headquarters.

12 Q. These were not taken at the defendant's residence; is that
13 correct?

14 A. No, they were not.

15 Q. Now, I want you to go back and look at Government's
16 Exhibit 1104.

17 A. I have 1104.

18 Q. Is this the photograph you testified to on direct
19 examination?

20 A. Yes, it is.

21 Q. When was this photograph taken?

22 A. This was taken on June 17th, 2006 approximately 11:20 --
23 1:34 in the afternoon -- 1:24 in the afternoon. My apologies.

24 Q. You took this photograph; is that right?

25 A. Yes, I did.

1 Q. Can you explain when during the course of the search you
2 took this photograph?

3 A. During the beginning of the search.

4 Q. Do you recall approximately how long after the bag was
5 removed from the closet did you take this photograph,
6 Exhibit 1104?

7 A. I took two photos. One -- I don't understand the question.

8 Q. Let's take a look at another photograph. Can you take a
9 look at Government's Exhibit 1100.

10 A. Okay.

11 Q. Do you see the yellow bag in 1100?

12 A. Yes, I did.

13 Q. Did you take this photograph?

14 A. Yes, I did.

15 Q. And then can you please describe what happened after you
16 took this photograph which is Government's Exhibit 1100?

17 A. After I took this particular photograph, then a few seconds
18 later, about 20 seconds later, it actually -- it was opened so I
19 could take a photograph of the original contents of the bag
20 before the police moved it.

21 Q. When you say it was opened, are you referring to the yellow
22 bag?

23 A. Yes.

24 Q. The other two photographs, 1152 and 1153 that we saw
25 earlier, those were taken a day later or two days later at the

1 Cambodian National Police; is that correct?

2 A. That's correct.

3 Q. Do you know what other items the Cambodian National Police
4 may or may not have put into the bag?

5 A. Just from the pictures is all I could tell you.

6 Q. Going back to Government's Exhibit 1104, is that the
7 condition the bag was in when you saw it taken out of the
8 closet?

9 A. This is how it was when I seen it in the closet.

10 Q. When you say "this," what are you referring to?

11 A. Exhibit 1104, the yellow bag with the masking tape and the
12 rope.

13 Q. And just I would like you to go back briefly to
14 Government's Exhibit 1124, which is a photograph, which is in
15 the binder.

16 A. I have 1124.

17 Q. On cross-examination, you mentioned the word "riel"?

18 A. Yes.

19 Q. Can you spell that?

20 A. It's R-I-E-L.

21 Q. What are riel?

22 A. Riel is the money that is distributed in Cambodia, the
23 Cambodian money.

24 Q. Does this Exhibit 1124 also, besides showing U.S. dollars,
25 show riel?

1 A. Yes, it does.

2 Q. I would like you to get that map, 1177 out. Don't unfold
3 it. Just hold it up.

4 A. (Witness holds up map.)

5 Q. When it's folded what does it have on one side?

6 A. "Phnom Penh, 3D map."

7 Q. What does it have on the other side?

8 A. "Sex with children is a crime."

9 Q. You can put the map away.

10 And I would like to turn your attention to the
11 interview of I.T. that you were asked about on cross-examination
12 on June 16th of 2006.

13 Do you recall that interview?

14 A. Yes, I do.

15 Q. What photograph did you show her?

16 A. It was a photo taken over 20 years ago.

17 Q. A photo taken over 20 years ago of who?

18 MR. GUNN: Move to strike, Your Honor. No foundation
19 of personal knowledge.

20 THE COURT: Sustained. That will be stricken.

21 BY MS. DONAHUE:

22 Q. Did you show her a photograph of the defendant?

23 A. Yes, I did.

24 Q. And where did you get that photograph?

25 A. I received it from a colleague from another agency.

1 Q. Who did you receive it from?

2 A. The Naval Criminal Investigative Service.

3 Q. Can I have you take a look at Government's Exhibit 2085.

4 A. I have it.

5 Q. Do you recognize that?

6 A. Yes.

7 Q. What is that?

8 A. It's a photograph of Michael Pepe.

9 Q. Is that the same photograph that you showed to I.T.?

10 A. Yes.

11 Q. And does that photograph contain a date?

12 A. November 20, 1986.

13 MS. DONAHUE: Move Government's Exhibit 2085 into
14 evidence.

15 MR. GUNN: Your Honor, object. At least in its
16 present form.

17 THE COURT: Let me see that, please.

18 Can you show the photograph without the writing,
19 Ms. Donahue?

20 MS. DONAHUE: Yes.

21 Q. What did I.T. say about that photograph?

22 A. That she didn't recognize that particular photo.

23 Q. Did she make any comment about that photo?

24 A. It wasn't the best photo, but she did say that he had a
25 sharp nose and no mustache.

1 Q. And why didn't -- and was that particular interview where
2 she made those statements videotaped?

3 A. Yes, it was.

4 Q. Why didn't you include her misidentification on this
5 photograph in your report?

6 A. That was a very old photo. That's the only one I had at
7 the time. And I usually don't report negative findings.

8 Q. Did she subsequently make an identification in this case?

9 A. Yes, she did.

10 MS. DONAHUE: I have no further questions.

11 THE COURT: Recross?

12 RECROSS-EXAMINATION

13 BY MR. GUNN:

14 Q. At the time you wrote your report about the June 16th
15 interview, she hadn't made identification; correct?

16 A. I'm sorry. I can't hear you.

17 Q. At the time you wrote your report of the June 16th
18 interview, she hadn't made an identification, had she?

19 A. No. Oh, wait. No.

20 MR. GUNN: No further questions, Your Honor.

21 THE COURT: All right. I think it's time for our
22 break then and you can set up.

23 MS. DONAHUE: I think the witness didn't finish
24 answering the question.

25 THE COURT: He answered the question.

MS. DONAHUE: May I inquire on redirect?

THE COURT: Briefly.

REDIRECT EXAMINATION

BY MS. DONAHUE:

Q. Did you finish answering that question?

A. I did not. I am sorry.

MR. GUNN: I object.

THE COURT: He did finish. He said no.

MR. GUNN: He wants to change his answer.

BY MS. DONAHUE:

Q. At the time you wrote a report, had an identification been made?

A. Yes.

Q. What is your answer based on?

A. Because I wrote the report, I believe, two weeks later.

MS. DONAHUE: I have no further questions.

THE COURT: Mr. Gunn?

MR. GUNN: Nothing further.

THE COURT: All right.

We will take a 15 minute break. Ladies and gentlemen, don't talk about the case or form or express any opinions about the case until it's finally submitted to you. This one should be 15 minutes because I think my other jury is gone.

(Recess taken)

(A. M. Proceedings adjourned at 12:30 p.m.)

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 WESTERN DIVISION

4 THE HON. DALE S. FISCHER, JUDGE PRESIDING

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6 UNITED STATES OF AMERICA,)
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PLAINTIFF,)
vs.) CR 07-168 (A) -DSF
MICHAEL JOSEPH PEPE,)
DEFENDANT.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

- REDACTED -

LOS ANGELES, CALIFORNIA

TUESDAY, MAY 13, 2008

AFTERNOON SESSION

LYNNE SMITH
OFFICIAL COURT REPORTER
ROYBAL FEDERAL BUILDING
EAST TEMPLE STREET
ROOM 181-A
LOS ANGELES, CALIFORNIA

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1398	8
1402	11
2067	23

1 TUESDAY, MAY 13, 2008; LOS ANGELES, CALIFORNIA

2 -oOo-

3 (JURY PRESENT)

4 THE COURT: Ladies and gentlemen, we're going to
5 have a child witness next. As I indicated, we're going to
6 refer to the child only by the first name.

7 And, in addition, the law requires that a
8 videotape be made of the adult who will be coming in with
9 the child during the entire course of the proceedings; so
10 that's why we're doing that. The law says we have to.

11 Ms. Donahue.

12 MS. DONAHUE: Thank you, Your Honor.

13 The government calls T.C.xx.

14 **INTERPRETER SWORN**

15 THE COURT: What language do you speak, ma'am?

16 THE INTERPRETER: Cambodian, Your Honor.

17 THE CLERK: If you could please state your first
18 name and spell your first name for the record.

19 THE WITNESS: T.C.xx.

20 THE COURT: You may proceed.

21 MS. DONAHUE: Thank you, Your Honor.

22 And if the interpreter wants to move the
23 microphone closer to her, that might make it more
24 convenient.

25 THE INTERPRETER: Thank you.

1 **T.C, GOVERNMENT'S WITNESS, SWORN**

2 BY MS. DONAHUE:

3 Q Good afternoon, T.C.xx.

4 A Good afternoon.

5 Q Can you tell us how old are you.

6 A I'm 15 years old.

7 Q T.C.xx, what country do you live in?

8 THE COURT: Ms. Donahue, you're actually speaking
9 to the interpreter; so I don't think you have to go quite so
10 slowly.

11 MS. DONAHUE: Okay.

12 THE WITNESS: Cambodia.

13 BY MS. DONAHUE:

14 Q Does your family live in Cambodia?

15 A Yes.

16 Q Where in Cambodia does your family live?

17 A Phnom Penh.

18 Q And does your father have a job in Phnom Penh?

19 A Yes.

20 Q What does he do?

21 A Construction.

22 Q Does your mother have a job in Phnom Penh?

23 A Yes.

24 Q What does she do?

25 A Sells bakery.

1 Q Do you have any brothers and sisters?

2 A Yes.

3 Q How many brothers and sisters do you have?

4 A I have three older brothers, four sisters.

5 Q Do you live with your family right now?

6 A No.

7 Q In Cambodia, where do you live?

8 A At the center.

9 Q What is the center?

10 A Agape.

11 Q And is Agape a place where children stay?

12 A Yes.

13 Q Do you go to school?

14 A Yes.

15 Q What grade are you in?

16 A Fourth.

17 Q What subjects do you study?

18 A Cambodian class, English, computer.

19 Q What is your favorite class?

20 A Computer.

21 Q What do you want to do when you grow up?

22 A Computer.

23 Q T.C.xx, I would like you to take a look at the
24 photograph, Government's Exhibit 1077.

25 MS. DONAHUE: If you can put it on the overhead,

1 maybe that will help. There's a screen right in front of
2 her.

3 BY MS. DONAHUE:

4 Q T.C.xx, do you know what that is a picture of?

5 A A house.

6 Q Do you know whose house it is?

7 A That's Michael's house.

8 Q How do you know that that is Michael's house?

9 A Because I used to live there.

10 Q About how long ago did you live there?

11 A Two years ago.

12 MS. DONAHUE: Can I have Government's Exhibit 1397
13 placed in front of the witness. And it's not in evidence.

14 BY MS. DONAHUE:

15 Q T.C.xx, what is that a picture of?

16 A That's my picture.

17 Q Is that you?

18 A Yes.

19 Q Who took that picture?

20 A Michael.

21 MS. DONAHUE: Move Government's Exhibit 1397 into
22 evidence.

23 THE COURT: Any objection?

24 MR. BROWN: No objection.

25 THE COURT: All right. That will come in.

1 *(Exhibit 1397 received in evidence.)*

2 BY MS. DONAHUE:

3 Q T.C.xx, where was that picture taken?

4 A At his house.

5 Q And when you say "his," do you mean Michael's?

6 A Yes.

7 Q Was that upstairs on the balcony?

8 A Yes.

9 Q Can you take a look at another picture for me,
10 Exhibit 1398.

11 (Government's Exhibit Number 1398 marked for
12 identification.)

13 BY MS. DONAHUE:

14 Q What is that a picture of?

15 A That's my picture.

16 MS. DONAHUE: Move 1398 into evidence.

17 THE COURT: Objection?

18 MR. BROWN: No objection, Your Honor.

19 THE COURT: That will come in.

20 Thank you.

21 *(Exhibit 1398 received in evidence.)*

22 BY MS. DONAHUE:

23 Q Who took that picture?

24 A Michael.

25 Q T.C.xx, are you smiling in that picture?

1 A Yes.

2 Q Why are you smiling?

3 A Michael told me to.

4 Q Did you speak English?

5 A No.

6 Q Did Michael speak Khmer when he told you to smile?

7 A No.

8 Q So how did he tell you to smile in the picture?

9 A I looked at him and he just told me to smile. He
10 showed me on his face.

11 Q Did you want to smile?

12 MR. BROWN: Objection, Your Honor. 403.

13 THE COURT: Overruled.

14 BY MS. DONAHUE:

15 Q Did you want to smile?

16 A No.

17 Q Why not?

18 A I was not happy.

19 Q Why not?

20 A I was afraid.

21 Q What were you afraid of?

22 A I was afraid that he might hurt me.

23 Q When you say "he," who do you mean?

24 A Michael.

25 Q Why were you afraid that Michael might hurt you?

1 A Because I have seen him hurt other children.

2 Q Now, T.C.xx, in this picture you are holding something;
3 is that right?

4 A Yes.

5 Q What are you holding?

6 A Rose.

7 Q Where did you get the rose?

8 A Michael gave it to me.

9 Q And was this a special occasion?

10 A Yes.

11 Q What was it?

12 A It was on a Valentine's Day.

13 Q Had you ever received a rose on Valentine's Day before?

14 MR. BROWN: Objection 403.

15 THE COURT: Overruled.

16 BY MS. DONAHUE:

17 Q Had you ever received a rose on Valentine's Day before?

18 A No.

19 Q Now T.C.xx, did you give anything to Michael for
20 Valentine's Day?

21 A Yes.

22 Q What did you give him?

23 A Rose.

24 Q Did you buy the rose?

25 A Yes.

1 Q Where did you get the money to buy the rose for
2 Michael?

3 A Michael gave it to me.

4 Q Why did you give him a rose for Valentine's Day?

5 A I was afraid he might be upset.

6 Q Why were you afraid he might be upset?

7 A He was sitting alone, quiet.

8 Q Why did that make you think he might be upset?

9 A Because he bought it for me and I didn't buy that for
10 him.

11 MS. DONAHUE: Can I have Government's
12 Exhibit 1402.

13 BY MS. DONAHUE:

14 Q T.C.xx, do you know what that is a picture of?

15 A My picture and other children.

16 Q Who took that picture?

17 A Michael.

18 MS. DONAHUE: Move 1402 into evidence.

19 MR. BROWN: No objection, Your Honor.

20 THE COURT: Admitted.

21 *(Exhibit 1402 received in evidence.)*

22 BY MS. DONAHUE:

23 Q T.C.xx, starting with you the girl who is standing in
24 the back, can you tell us who these girls are.

25 A S.S.xx, L.K.xx, S.R.x, Nok, and myself.

1 Q Where did Michael take this picture?

2 A Upstairs on a balcony.

3 Q Is that upstairs on the balcony at his house?

4 A Yes.

5 Q Was this picture also taken on Valentine's Day?

6 A Yes.

7 Q T.C.xx, did you ever see any rooms in Michael's house
8 besides the balcony?

9 A His bedroom.

10 Q Did you see the inside of Michael's bedroom?

11 A Yes.

12 MS. DONAHUE: Ask if Government's Exhibit 1096
13 could be placed in front of the witness.

14 BY MS. DONAHUE:

15 Q Have you ever seen that bed before, T.C.xx?

16 A Yes.

17 Q Did you see that when you were at Michael's house?

18 A Yes.

19 Q Did something happen to you in the bedroom that's in
20 that picture?

21 A He hurt me.

22 Q Did he hurt you more than once?

23 A Yes.

24 Q Let's talk about the first time.

25 When you say "he," do you mean Michael?

1 A Yes.

2 Q Do you remember what happened the first time that
3 Michael hurt you?

4 A Yes.

5 Q What happened?

6 A He put a pill in the soft drinks. He took off my
7 clothes.

8 Q Did you drink the soft drink after he put the pill into
9 it?

10 A Yes.

11 Q How did that make you feel?

12 A I was tired.

13 Q When Michael took off your clothes what was he wearing?

14 A He didn't wear anything.

15 Q What happened after Michael took off your clothes?

16 A He tied my arms, my legs.

17 Q Can you remember what he did to tie your arms?

18 A A rope.

19 Q What color was the rope?

20 A White.

21 Q Can you show how he tied your arms with the white rope.

22 A Show?

23 Q Yes.

24 Can you show with your arms.

25 A He tied my wrists this way, separately.

1 THE COURT: She's holding her wrists out away from
2 the side of her body.

3 BY MS. DONAHUE:

4 Q What did he attach the other end of the rope to?

5 A To the bed -- attached, tied to the bed.

6 Q Did he also tie your legs?

7 A Yes.

8 Q What did he use to tie your legs?

9 A The same color white rope.

10 Q What did he -- did he tie your legs to something?

11 A The bed.

12 Q Do you remember what happened after Michael tied your
13 arms and legs to the bed?

14 A And then he raped me.

15 Q Were you tired?

16 A Yes.

17 Q Did you feel him rape you?

18 A Yes.

19 Q When you say he raped you, can you say what he did.

20 A He inserted his penis in my vagina.

21 Q What happened after that?

22 A Later he untied me.

23 Q Did you feel groggy or tired?

24 A Yes.

25 Q Do you know whether or not you fell asleep?

1 A No.

2 Q You did not fall asleep?

3 A No.

4 Q How did you feel?

5 A Despair.

6 Q Did you feel any pain?

7 A Yes.

8 Q Where?

9 A In my private.

10 Q In your private part?

11 A Yes.

12 Q And Michael untied you; is that right?

13 A Yes.

14 Q Did you say anything to him?

15 A No.

16 Q Did you make any noise?

17 A No.

18 Q How come?

19 A I screamed, but no one would help me.

20 Q When did you scream?

21 A During the time when he was raping me.

22 Q Did you bleed at all?

23 A Yes.

24 Q Where were you bleeding?

25 A My private.

1 Q Was this the only time that Michael put his penis into
2 your vagina?

3 A No. More times. Four times.

4 Q Do you remember the second time?

5 A It was the same thing, like the first time, but he did
6 not tie my arms or my legs.

7 Q So he tied your arms and legs the first time?

8 A Yes.

9 Q And not again; is that right?

10 A Yes.

11 Q The first time did you see Michael take any medicine
12 before he put his penis into your vagina?

13 A Yes.

14 Q Can you describe what you saw him take?

15 A Yes.

16 Q What was it?

17 A The color was green, long.

18 Q The color of the pill?

19 A Yes.

20 Q The second time, did that also happen on the bed that's
21 in the picture?

22 A Yes.

23 Q And can you say what happened the second time.

24 A The second time would be like the first time, but he
25 did not tie my arms or my legs.

1 Q The second time did you scream?

2 A No.

3 Q How come?

4 A I did not scream, but I was crying.

5 Q Why were you crying?

6 A It was painful.

7 Q What was painful?

8 A My private was painful.

9 Q Did Michael ever hit you?

10 A Yes.

11 Q What did he hit you with?

12 A His hand.

13 Q Was his hand open or closed when he hit you?

14 A Open.

15 Q Where did he hit you?

16 A My back.

17 Q What were you doing when Michael hit you on the back?

18 A I wouldn't sleep with him.

19 Q When you say, "I wouldn't sleep with him," what do you
20 mean?

21 A I meant that I wouldn't let him insert his penis in my
22 vagina.

23 Q How did you tell him that you did not want him to do
24 that?

25 A "No."

1 Q Did you show him that you did not want him?

2 A No.

3 Q What was going on when Michael hit you?

4 A Hit me?

5 Q Yes.

6 What was going on?

7 A Because I wouldn't sleep with him.

8 Q The second time you said he did not tie you up and he
9 did not give you any medicine; is that right?

10 A Yes.

11 Q And it happened two more times after that; is that
12 right?

13 A Yes.

14 Q And were both of those times on the bed that is in the
15 picture?

16 A Yes.

17 Q Was anybody else in the room during any of those four
18 times?

19 A When I was with him, no.

20 Q So the first time it happened was anybody in the room
21 besides you and Michael?

22 A No.

23 Q How about the second time?

24 A No.

25 Q How about the third time?

1 A No.

2 Q How about the fourth time?

3 A No.

4 Q Besides putting his penis into your vagina, did Michael
5 have you put his penis anyplace else?

6 A He asked me to suck on his penis.

7 Q Did you suck on his penis?

8 A Yes.

9 Q How did he ask you to suck on his penis?

10 A He took his pants off and he pointed to his bottom.

11 Q Did you do anything else?

12 A No.

13 Q Was this in his house?

14 A Yes.

15 Q What room was that in?

16 A In the same room.

17 (Witness crying.)

18 THE COURT: Paul, can we get some water.

19 T.C.xx, can you continue?

20 THE WITNESS: Yes, I can.

21 THE COURT: Thank you.

22 Ms. Donahue.

23 MS. DONAHUE: Thank you, Your Honor.

24 BY MS. DONAHUE:

25 Q Was anyone else there when you sucked on Michael's

1 penis?

2 A Yes.

3 Q Who else was there?

4 A L.K.xx, S.R.x, S.S.xx, and sister-in-law.

5 Q What were L.K.xx S.R.x, S.S.xx, and Nok doing when you
6 were sucking on Michael's penis?

7 A They would do the same that I was doing.

8 Q Did all of those other girls suck on his penis too?

9 A Yes.

10 Q Did that happen more than one time?

11 A More than once.

12 Q When you sucked on Michael's penis did anything come
13 out?

14 A Yes.

15 Q What came out?

16 A His sperm.

17 Q What did you do?

18 A I stopped.

19 Q Did you taste it?

20 A No.

21 Q What did you do with it?

22 A I spit it out.

23 Q T.C.xx, did Michael ever give you any money?

24 A Yes.

25 Q When did he give you money?

1 A After he raped me.

2 Q Did he give you money every time after he raped you?

3 A Yes.

4 Q How much money did he give you each time after he raped
5 you?

6 A One dollar.

7 Q Did you get money from Michael at any other time?

8 A Yes.

9 Q When?

10 A When he told me to go buy clothes.

11 Q How much money did Michael give you to buy clothes?

12 A Five dollars.

13 Q What did you do with the \$5?

14 A I would buy clothes and some bakery.

15 Q After you sucked on Michael's penis did he give you any
16 money?

17 A Yes.

18 Q Did he give you money every time you did it?

19 A Yes.

20 Q How much did he give you?

21 A One dollar.

22 Q T.C.xx, do you remember about how long you were at
23 Michael's house?

24 A About two to three weeks.

25 Q How did you get to Michael's house?

1 A Song.

2 Q Did Song bring you to Michael's house?

3 A Yes.

4 Q Who is Song?

5 A I know her through Michael.

6 Q And did Song bring you from your house to Michael's
7 house?

8 A Yes.

9 Q When Song brought you to Michael's house, what did you
10 think you were going to do at Michael's house?

11 A That I would be able to go to school.

12 Q When you lived at your house before you were at
13 Michael's did you go to school?

14 A Sometimes.

15 Q How come only sometimes?

16 A Some days I have money and some other days I did not
17 have money.

18 Q Does it cost money to go to school in Cambodia?

19 A Yes.

20 Q I'm going so show you a picture, Government's
21 Exhibit 2067.

22 Do you know who the lady in that picture is?

23 A That's Song.

24 MS. DONAHUE: Move 2067 into evidence.

25 THE COURT: Any objection?

1 MR. BROWN: No objection, Your Honor.

2 THE COURT: Admitted.

3 *(Exhibit 2067 received in evidence.)*

4 BY MS. DONAHUE:

5 Q T.C.xx, how did you leave Michael's house when you left
6 and went away?

7 A She took me away.

8 Q When you say "she," do you mean Song?

9 A Yes.

10 Q Did you ask her to take you away?

11 A No.

12 Q Do you know why she took you away?

13 A She said that other places would be better than that
14 house; that they -- they won't -- they're probably not going
15 to hurt you.

16 Q Did you ever run away from Michael's house?

17 A No.

18 Q How come?

19 A I was afraid that he might hit me.

20 Q T.C.xx, can you stand up and look around the courtroom
21 and tell me if you see Michael in the courtroom.

22 You can have a seat.

23 MS. DONAHUE: May the record reflect she's
24 identified the defendant.

25 THE COURT: I don't know who she identified.

1 MS. DONAHUE: Would you like for her -- okay.

2 BY MS. DONAHUE:

3 Q T.C.xx, can I have you stand up one more time. Can you
4 point one more time.

5 THE COURT: T.C.xx, you can sit down.

6 T.C.xx, you pointed at someone. Would you
7 describe the man you pointed at or tell me where he's
8 sitting.

9 THE WITNESS: Sitting right over there.

10 THE COURT: Are you pointing to one of the tables
11 over there?

12 THE WITNESS: That table.

13 THE COURT: There are three people sitting at that
14 table. Is it the man closest to you, the man in the middle,
15 or the man farthest away?

16 THE WITNESS: The first one.

17 THE COURT: Indicating the defendant.

18 MS. DONAHUE: Thank you, Your Honor.

19 BY MS. DONAHUE:

20 Q T.C.xx, when you were at Michael's house did any
21 visitors ever come over?

22 A No.

23 Q Did you ever see any visitors?

24 A No.

25 Q Were you ever upstairs when any visitors came over?

1 A Can you ask the question again?

2 Q Sure.

3 At the house were you ever upstairs when you heard
4 people downstairs at the front door?

5 A Yes.

6 Q And what would happen when people would come to the
7 front door?

8 A He would tell me to go and hide.

9 Q Who would tell you to go and hide?

10 A Michael.

11 Q What would you do?

12 A I would do as he said. I would hide.

13 Q Where did you hide?

14 A In a closet.

15 Q How would you know when to come out?

16 A He called me out.

17 Q And when you came out were there any visitors in the
18 house?

19 A No.

20 Q T.C.xx, at Michael's house did any man besides Michael
21 put his penis inside of your vagina?

22 A No.

23 Q At Michael's house did any man besides Michael have you
24 suck on his penis?

25 A No.

1 Q At Michael's house did any man besides Michael hurt
2 you?

3 A No.

4 MS. DONAHUE: I have no further questions.

5 THE COURT: Thank you.

6 Cross-examination.

7 **CROSS-EXAMINATION**

8 BY MR. BROWN:

9 Q Good afternoon, T.C.xx.

10 A Good afternoon.

11 Q My name is Charles Brown, and I'm Michael Pepe's
12 attorney. I have to ask you a few questions.

13 Is that okay?

14 A Yes.

15 Q Thank you.

16 You're 15 years old?

17 A Yes.

18 Q And you were born in Phnom Penh?

19 A Yes.

20 Q And how many brothers and sisters do you have?

21 A Three brothers, four sisters.

22 Q And you were raised by your mom and your dad?

23 A Yes.

24 Q Do you speak Vietnamese?

25 A Yes.

1 Q You also speak Khmer?

2 A Yes.

3 Q Are you more comfortable speaking Vietnamese or more
4 comfortable speaking Khmer?

5 A Cambodian.

6 Q Where are you living now, T.C.xx?

7 A At this moment?

8 Q Yes.

9 A I'm in the courtroom.

10 Q Okay.

11 (LAUGHTER)

12 BY MR. BROWN:

13 Q You don't stay with your parents, though; right?

14 A Correct.

15 Q You live at a place called Agape?

16 A Correct.

17 Q How long have you lived at Agape?

18 A Two years.

19 Q And Agape has a house in the city of Phnom Penh?

20 A Yes.

21 Q In the two years that you have lived at Agape have you
22 had a chance to visit your family?

23 A Yes.

24 Q How often do you see your family?

25 A Often.

1 Q How often is often?

2 A Once a month.

3 Q And do you see your mother and your father and your
4 brothers and sisters?

5 A Yes.

6 Q One time per month?

7 A Yes.

8 Q Do you like living at Agape?

9 A Yes.

10 Q What is it like there? What do you like about it?

11 A I like to study.

12 Q They have a school there?

13 A Yes.

14 Q How often do you go to school? Every day?

15 A Through Friday.

16 Q Do you have a lot of friends at Agape?

17 A Yes.

18 Q Who are some of your friends?

19 A I don't remember a whole lot.

20 Q Does L.K.xx live at Agape with you?

21 A Yes.

22 Q Does S.S.xx?

23 A Yes.

24 Q Does S.R.x live at Agape with you?

25 A Yes.

1 Q Does NTDx live at Agape with you? The girl named NTDx,
2 does she live at Agape with you?

3 A No.

4 Q Do you play with L.K.xx and S.R.x and S.S.xx at Agape?

5 A Yes.

6 Q Do you talk to them a lot?

7 A Yes.

8 Q Do you guys go to counseling together also at Agape?

9 A Yes.

10 Q So you all meet together as a group sometimes?

11 A No.

12 Q Do you remember speaking with a person named Gary
13 Phillips two years ago and they videotaped you when you were
14 interviewed? Do you remember that?

15 A In a disc?

16 Q Yes.

17 A Yes.

18 Q In a disc.

19 Have you seen a copy of the disc -- of the
20 interview?

21 A At the time of the interview I did not realize there
22 was a video.

23 Q Did you ever see the video later on?

24 A Yes.

25 Q Who showed you the video later on?

1 A Patty.

2 Q Is that when you met with her earlier this year?

3 A Yes.

4 Q Did you see the entire video?

5 A Yes.

6 Q All five parts of the video?

7 A Yes.

8 Q How many times did you meet with Patty?

9 A I don't really remember.

10 Q Was it more than one time?

11 A Yes.

12 Q How many times did you meet with Gary, T.C.xx, if you
13 remember?

14 A Once.

15 Q When they made the video you spoke in Vietnamese.

16 Do you remember that?

17 A Yes.

18 Q Why did you speak in Vietnamese when the video was
19 made, do you know?

20 A Because the lady told me to speak Vietnamese.

21 Q And the lady is the lady who works for World Hope
22 International? The Center?

23 A Yes.

24 Q And she was your counselor at the time; right?

25 A No.

1 Q Did you know her from before?

2 A No.

3 Q You had never seen her before?

4 A You mean inside the organization or outside?

5 Q Either/or.

6 A I saw her in a center.

7 Q What center was that?

8 A World Hope.

9 Q Before you went to the Agape center you were at the
10 World Hope Center?

11 A Yes.

12 Q And you saw that lady at the World Hope Center?

13 A Yes.

14 Q How long were you at the World Hope Center?

15 A About two and a half months.

16 Q It seems like your Khmer is very good, T.C.xx.

17 A Thank you.

18 Q You didn't really need a Vietnamese interpreter the
19 first time, did you?

20 A No.

21 Q The lady -- well, there was a person who spoke Khmer at
22 the interview; right?

23 A Yes.

24 Q Did you think it was kind of funny that the lady was
25 interpreting what you were saying from Vietnamese to Khmer

1 and then the person was translating it from Khmer to
2 English? Did you think that was kind of funny?

3 A No.

4 Q The lady who spoke Vietnamese, she used a lot of bad
5 words, didn't she?

6 A No.

7 Q You said that Basang took you to Michael's house?

8 A Yes.

9 Q How did you meet Basang?

10 A I was playing, and she just came and asked me.

11 Q She spoke to your mother; right?

12 A No.

13 Q Basang never spoke with your mother?

14 A No.

15 Q Okay. Do you remember when you spoke with Gary that
16 you told him that Basang spoke with your mother first?

17 A I don't remember.

18 Q Okay. Would it help you if I played a part of the
19 video?

20 A I don't want to see.

21 Q T.C.xx, it's important that everything you say today is
22 accurate. Okay? And I want to play the video to make sure
23 you're remembering everything correctly.

24 A Yes.

25 Q Is that okay with you? Please?

1 A Go ahead.

2 MR. BROWN: Your Honor, may I please play a
3 portion.

4 MS. DONAHUE: We identified for the record what
5 portion of the record he's going to play.

6 MR. BROWN: The portion from Volume II of the
7 August 2006 T.C.xx interview.

8 MS. DONAHUE: What page?

9 MR. BROWN: I'm starting on counter -- it's
10 Page 6. And the counter on the video is 1140.

11 MS. DONAHUE: Your Honor, the Government is
12 willing to stipulate, but he wants to play it anyway.

13 THE COURT: That's not how you refresh
14 recollection. Well, as long as the Government is willing to
15 stipulate, you want to state the stipulation?

16 MR. BROWN: Your Honor, I guess for the record,
17 the Government and the defense stipulate that when T.C.xx
18 was interviewed in 2006 she told Agent Phillips that Basang
19 spoke to her Mom; that Basang spoke to her Mother about
20 selling her virginity.

21 Her Mom chastised her for making such a
22 suggestion. Then Basang left. And then she came -- Basang
23 came to the house again when Mom was not home, and she
24 asked me to go with, and she left with Basang at that time.

25 THE COURT: Thank you.

1 Accept the stipulation?

2 MR. BROWN: Yes.

3 THE COURT: All right. Ladies and gentlemen, you
4 are to accept that as true.

5 You may proceed, Mr. Brown.

6 BY MR. BROWN:

7 Q T.C.xx, you said that you were at Michael's house for
8 about two to three weeks.

9 A Yes.

10 Q And isn't it true that -- well, strike that.

11 When you left -- when Patty was questioning you,
12 T.C.xx, right now, you said that Basang took you -- I'm
13 sorry. Basang took you from Michael's house.

14 THE INTERPRETER: Can you repeat that, please?

15 MR. BROWN: Yes. I'm sorry.

16 BY MR. BROWN:

17 Q Earlier T.C.xx said that Basang picked her up from the
18 house.

19 A I did not say she.

20 Q Okay. Who picked you up from the house -- from
21 Michael's house?

22 A She did not kicked me out. She took me.

23 Q I said picked her up from the house. I'm sorry. I
24 didn't say "kicked."

25 MS. DONAHUE: Objection. That's vague.

1 MR. BROWN: I will rephrase, Your Honor.

2 THE COURT: Thank you.

3 BY MR. BROWN:

4 Q When you left the house, T.C.xx, did Basang -- did you
5 leave with Basang or did you leave with your mother?

6 MS. DONAHUE: Objection. Vague. Left which
7 house?

8 THE COURT: Sustained.

9 BY MR. BROWN:

10 Q When you left Michael's house who did you leave with?

11 A Song.

12 Q T.C.xx, when you spoke with Gary Phillips, that's not
13 what you told him; right?

14 A Not true.

15 Q You didn't tell Gary that your Mother came to pick you
16 up from the house?

17 A Excuse me?

18 Q You didn't tell Gary that your Mother came to pick you
19 up from Michael's house, T.C.xx?

20 A Not true.

21 MR. BROWN: Your Honor, if I could just play the
22 portion of the video from October -- from August 6th.

23 THE COURT: Indicate the portion for the
24 government.

25 MR. BROWN: Yes, Your Honor.

1 I would be playing Volume V. If we could go to
2 Counter 2425.

3 THE COURT: Ms. Donahue.

4 MS. DONAHUE: All right. You may.

5 MR. BROWN: Thank you.

6 Your Honor, if we can play that portion for the
7 witness.

8 THE COURT: Yes.

9 (Video played but not reported per stipulation.)

10 BY MR. BROWN:

11 Q T.C.xx, were you able to hear that portion of the
12 video? I know the volume was low.

13 A I can hear some.

14 Q Would you like me to play it again?

15 A No.

16 Q So do you remember now telling Agent Phillips that your
17 Mother came to pick you up?

18 A I think I remember, but at the time I don't really
19 remember what was going on.

20 Q You didn't remember what was going on two years ago?

21 A Yes.

22 Q You remember better now?

23 A About what happened?

24 Q About who picked you up.

25 A Song.

1 Q Okay. After you left -- strike that.

2 Do you remember Gary asking you about a -- do you
3 remember the agent asking you about a person name Babo,
4 T.C.xx?

5 A Babo?

6 Q Do you remember talking about a person named Babo?

7 A No.

8 MR. BROWN: Your Honor, I have no further
9 questions at this time.

10 THE COURT: Redirect.

11 MS. DONAHUE: No questions, Your Honor.

12 THE COURT: Thank you very much, T.C.xx. You're
13 finished.

14 Ladies and gentlemen, don't talk about the case or
15 form or express any opinions about the case until it's
16 finally submitted to you. You're ordered to return tomorrow
17 at 8:00 a.m., and you're ordered to have a good evening.

18 THE CLERK: All rise.

19 (JURY EXCUSED)

20 THE COURT: Is there anything we need to discuss
21 before tomorrow morning?

22 MS. DONAHUE: No, Your Honor.

23 THE COURT: What witnesses does the government
24 intend to call tomorrow?

25 MS. DONAHUE: L.K.xx, I.T., NTDx. They are all

1 children.

2 THE COURT: They're going to take the whole day?

3 MS. DONAHUE: Well, I had thought so. But if not,
4 we'll -- it -- we'll keep going, and it will be S.R.x
5 probably, then Thomas -- well --

6 THE COURT: I assume they must be substantially
7 longer than this witness because she took barely an hour.

8 MS. DONAHUE: I think two of them will probably be
9 longer than this witness. And the other will probably be
10 about the same length.

11 THE COURT: Okay. Make sure you identify for the
12 defense any exhibits you intend to use tomorrow.

13 MS. DONAHUE: I will do that right now, Your
14 Honor.

15 THE COURT: All right. You're ordered to return
16 at 7:45.

17 MS. DONAHUE: Thank you.

18 MR. GUNN: Your Honor, one request. I think
19 there's a way to hook up the computers to the sound system.
20 I wonder if we can have the IT person here at 7:45.

21 THE COURT: I doubt the IT person is going to be
22 here at 7:45. You might be able to get him here this
23 afternoon.

24 MR. GUNN: We could try to meet the person here
25 this afternoon.

1 THE COURT: I don't know either. I'm not in
2 charge of that. You can discuss it with Mr. Pierson.

3 MR. GUNN: All right.

4 THE CLERK: All rise. This court stands in
5 recess.

6 (PROCEEDINGS WERE ADJOURNED)

7

8 CERTIFICATE

9 I hereby certify that pursuant to Section 753,
10 Title 28, United States Code, the foregoing is a true and
11 correct transcript of the stenographically reported
12 proceedings held in the above-entitled matter and that the
13 transcript page format is in conformance with the
14 regulations of the Judicial Conference of the United States.

15 Date: June 6, 2008

16

17 /S/ Lynne Smith_____
18 LYNNE SMITH
19 OFFICIAL COURT REPORTER
20
21
22
23
24
25

Certificate of Service

I hereby certify that on May 28, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

By: /s/ James H. Locklin
JAMES H. LOCKLIN
Deputy Federal Public Defender

No. 14-50095

**In the United States Court of Appeals
for the Ninth Circuit**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MICHAEL JOSEPH PEPE,
Defendant-Appellant.

On Appeal from the United States District Court
for the Central District of California
The Honorable Dale S. Fischer, Presiding
No. CR-07-00168-DSF

Appellant's Excerpts of Record
[Volume 5 of 12]

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[†] Although this document and the two orders that follow were not filed until after the judgment and notice of appeal were filed, they are placed here in the excerpts because they relate to the trial proceedings.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE DALE S. FISCHER, JUDGE PRESIDING

United States of America,)
Plaintiff,)
vs.) Case No.
) CR 07-168 (A) -DSF
Michael Joseph Pepe,)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS

Day 4

Los Angeles, California

Wednesday, May 14, 2008

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21 ALSO PRESENT: ATTACHE GARY PHILLIPS
22 ICE SPECIAL AGENT EDDY WANG
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24 VIETNAMESE INTERPRETER: ANN SPIRATOS

25 KHMER INTERPRETER: MORYVANN PAIGNE

1 witnesses in the restroom just as we're leaving because the
2 jurors are going to stop there before they leave the building
3 and head home.

4 MS. DONAHUE: Thank you, Your Honor. I will be sure
5 and let people know.

6 THE COURT: Is there anything else we need to discuss
7 before the jury hopefully comes in on time?

8 MS. DONAHUE: No, Your Honor.

9 THE COURT: Mr. Gunn?

10 MR. GUNN: No.

11 (Recess taken)

12 (Jury In)

13 THE COURT: Good morning. Everyone is present.
14 Ms. Donahue, does the Government with another witness?

15 MS. DONAHUE: Yes, Your Honor. The Government calls
16 L.K.xxx.

17 THE COURT: Our interpreter is still under oath.

18 L.K.xxx, Government's witness, was sworn

19 THE CLERK: Would you please have a seat. Please
20 spell your first name for the record.

21 THE WITNESS: My name is L.K.xxx.

22 THE COURT: Interpreter spelling, please.

23 THE INTERPRETER: L-K-x-x-x-x-x.

24 MR. GUNN: Your Honor, before we start, I have one
25 issue about one matter. It might be better to address at

1 sidebar.

2 (Sidebar conference commenced)

3 MR. GUNN: Your Honor, I noticed yesterday --

4 THE COURT: Then why didn't you bring it up at 7:45?
5 That's why you are here early. Don't do this again, Mr. Gunn.

6 MR. GUNN: I didn't remember if it would happen again.
7 I am troubled by the case agent who is here to help the
8 Government standing directly up close to the witness as another
9 sort of form of morale support when she already has her
10 attendant.

11 THE COURT: Your objection is overruled.

12 (Sidebar conference ended)

13 DIRECT EXAMINATION

14 BY MS. DONAHUE:

15 Q. Thank you, Your Honor.

16 Good morning, L.K.xxx.

17 A. Good morning.

18 Q. Can you tell us how old are you?

19 A. I am 14 years old.

20 Q. And is your birthday next month in June?

21 A. Yes.

22 Q. What country do you live in?

23 A. Kampuchea.

24 Q. Is Kampuchea another name for Cambodia?

25 A. Yes.

1 Q. Is your family in Cambodia?

2 A. Yes.

3 Q. Can you tell us, do you have any brothers and sisters?

4 A. I have one younger brother. That's it.

5 Q. And does your mother live near Phnom Penh?

6 A. Yes.

7 Q. Does your mother have a job?

8 A. Yes.

9 Q. What does your mother do?

10 A. She sewed.

11 Q. How about your stepfather? Does he have a job?

12 A. I don't know.

13 Q. I would like you to take a look at a photograph which is
14 Government's Exhibit 1020 for identification.

15 Do you know what that is a picture of?

16 A. It's not clear to me.

17 Q. Have you seen that before?

18 A. Maybe this is the picture of a house around my house.

19 Q. Does that look like part of your house in Cambodia?

20 MR. GUNN: Objection. Asked and answered.

21 THE COURT: Overruled.

22 THE WITNESS: I'm not clear.

23 BY MS. DONAHUE:

24 Q. That's okay. That's okay.

25 Now, L.K.xxx, in Cambodia, do you live with your

1 family?

2 A. I live in an organization.

3 Q. And is the organization where you live called Agape?

4 A. Yes.

5 Q. At Agape do you go to school?

6 A. Yes.

7 Q. What grade are you in?

8 A. 6th.

9 Q. What subjects do you study?

10 A. English, Cambodian, sociology -- sociology and I guess
11 history.

12 Q. Which one is your favorite?

13 A. Math.

14 Q. L.K.xxx, what do you like to do for fun?

15 A. I like to go to the beach.

16 Q. Now, L.K.xxx, I'd like you to take a look at another
17 photograph. This is Government's Exhibit 1077.

18 Do you know what that is a picture of?

19 A. Yes.

20 Q. What is that a picture of?

21 A. Michael's house.

22 Q. How do you know that that is a picture of Michael's house?

23 A. I used to live there.

24 Q. Do you remember about when you used to live there?

25 A. During the festival of water, Water Festival.

1 Q. You went to live there during the Water Festival; is that
2 right?

3 A. At the beginning, yes. It started at the time Water
4 Festival celebration.

5 Q. Is the Water Festival celebration in Cambodia in November?

6 A. I -- I don't know. All I know is the Water Festival.

7 Q. I would like you to take a look at another photograph,
8 Government's Exhibit 1344.

9 Can you tell us what that is a picture of?

10 A. That's my picture.

11 Q. That's you?

12 A. Yes.

13 Q. Who took that picture?

14 A. Michael.

15 MS. DONAHUE: Move 1344 into evidence.

16 THE COURT: Any objection?

17 MR. GUNN: No, Your Honor.

18 THE COURT: That will come in. Thank you.

19 (Government's Exhibit 1344 was received)

20 BY MS. DONAHUE:

21 Q. Where was that picture taken?

22 A. In front of his office.

23 Q. And when you say "his office" who do you mean?

24 A. Where he usually work at and his computer there.

25 Q. Was that at his house?

1 A. Yes.

2 Q. Do you remember the white stuffed animal that you're
3 holding?

4 A. Yes. That is a bear.

5 Q. Did somebody give that to you?

6 A. Michael gave it to me.

7 Q. Had you ever had a stuffed animal like that before?

8 A. No. Never.

9 Q. I would like you to take a look at another picture,
10 Government's Exhibit 1364.

11 Do you know what that is a picture of?

12 A. During -- this is the picture on Christmas.

13 Q. Is that a picture of you?

14 A. Yes.

15 Q. Was that taken at Michael's house?

16 A. Yes.

17 MS. DONAHUE: Move 1364 into evidence.

18 THE COURT: Any objection?

19 MR. GUNN: No, Your Honor.

20 THE COURT: That will come in. Thank you.

21 (Government's Exhibit 1364 was received)

22 BY MS. DONAHUE:

23 Q. L.K.xxx, can you tell us who are the people in that
24 photograph?

25 A. Myself, my mother, and my little brother.

1 Q. What is your little brother's name?

2 A. David.

3 Q. I'd like -- did you celebrate Christmas at Michael's house?

4 A. Yes.

5 Q. I would like you to take a look at another exhibit,
6 Government's Exhibit 1372.

7 What is that a picture of?

8 A. That's the gift from Michael.

9 Q. Is that a picture of you?

10 A. Yes.

11 MS. DONAHUE: Move 1372 into evidence.

12 THE COURT: That will come in. Thank you.

13 MR. GUNN: No objection.

14 (Government's Exhibit 1372 was received)

15 THE COURT: I am going to assume they are coming in
16 unless you state otherwise.

17 MR. GUNN: That's fine, Your Honor. If I just get two
18 seconds to react.

19 BY MS. DONAHUE:

20 Q. What is the present from Michael in that picture?

21 A. Shirt.

22 Q. Did you receive any other Christmas presents from Michael?

23 A. Yes.

24 Q. Do you remember what he gave you?

25 A. I can remember a little bit but I'm not quite sure.

1 Q. If you remember any of the things that he gave you, could
2 you tell us?

3 A. A watch, a ring, a hat, and that's all I remember.

4 Q. Now, at Christmas, did Michael give gifts to anybody else?

5 A. Yes.

6 Q. Who did he give gifts to?

7 A. S.R.xxx, S.S.xxx, Ngoc.

8 Q. Did you see any of the presents that he gave it to S.R.xxx,
9 or S.S.xxx or Ngoc?

10 A. Would -- would be the same like mine.

11 Q. And L.K.xxx, had you ever celebrated Christmas before the
12 Christmas that's in the picture that is in front of you?

13 A. No.

14 Q. Now, had you ever received Christmas gifts from anybody
15 before?

16 A. No.

17 Q. I'd like you to take a look at another picture,
18 Government's Exhibit 1390.

19 Who are the people in this picture?

20 A. Sang and my mother.

21 MS. DONAHUE: Move 1390 into evidence.

22 THE COURT: Admitted.

23 (Government's Exhibit 1390 was received)

24 BY MS. DONAHUE:

25 Q. Can you show us the one that I'm pointing to, what lady is

1 that?

2 A. My mother.

3 Q. That's your mother on the left.

4 And who is the lady on the right?

5 A. Sang.

6 Q. I would like you to take a look at another photograph.

7 This is Government's Exhibit 1353. I'm sorry. 1351. I
8 apologize. I misspoke.

9 Can you tell us what this is a picture of?

10 A. That's my birthday picture.

11 MS. DONAHUE: Move 1351 into evidence.

12 THE COURT: Admitted.

13 (Government's Exhibit 1351 was received)

14 BY MS. DONAHUE:

15 Q. Was that picture taken at a birthday party?

16 A. Yes.

17 Q. Where was the birthday party?

18 A. Inside Michael's house.

19 Q. And your birthday is in June; is that right?

20 A. Yes.

21 Q. So this was a birthday party in June of 2006; is that
22 right?

23 A. I'm not sure.

24 Q. L.K.xxx, can you see what is the name on the birthday cake?

25 A. Yes.

1 Q. What does that say?

2 A. L.K.xxxxxx.

3 Q. When you lived at Michael's house, what names did he call
4 you?

5 A. At first he called me LKx. And later he called me
6 L.K.xxxxxx.

7 Q. Who bought the birthday cake for you?

8 A. Michael.

9 Q. Had you ever had a birthday party before?

10 A. Never.

11 Q. I would like you to take a look at Government's
12 Exhibit 1353.

13 What is that a picture of?

14 A. That's my picture opening the gift.

15 Q. Where is that picture taken?

16 A. In the living room.

17 Q. In the living room of whose house?

18 A. Michael's house.

19 Q. Who is sitting on the couch with you?

20 A. My mother, S.S.xxx, and myself.

21 MS. DONAHUE: Move 1353 into evidence.

22 THE COURT: Admitted.

23 (Government's Exhibit 1353 was received)

24 BY MS. DONAHUE:

25 Q. What are you opening?

1 A. I'm not clear. I can't really see.

2 Q. Do you remember what Michael gave you for your birthday?

3 A. I think it was a bracelet.

4 Q. Is the lady seated on the couch two people to your right
5 your mother?

6 A. Yes.

7 Q. At the time of your birthday party, did your mother live at
8 Michael's house?

9 A. No. She just came and celebrated my birthday.

10 Q. Who invited her?

11 A. Sang.

12 Q. And how do you know that?

13 A. I asked permission from Michael, and he told Sang to ask my
14 mom to come.

15 Q. Now, L.K.xxx, did you live in Michael's house from before
16 Christmas until the police came to Michael's house in June?

17 A. Yes.

18 Q. Did you stay there every day, or were there times that you
19 went back home to see your mother?

20 A. I visited her once.

21 Q. Do you remember when that was?

22 A. I don't recall.

23 Q. How did you come to live at Michael's house?

24 A. Sang took me there.

25 Q. When you first got to Michael's house, did your mom and

1 your little brother David live there, too?

2 A. Yes.

3 Q. Did your mom have any jobs at Michael's house?

4 A. She cleans inside the house.

5 Q. Where inside the house did your mother clean?

6 A. The living room, the kitchen, and sometime in front of his
7 office.

8 Q. Did you ever see your mother clean in Michael's room?

9 A. No.

10 Q. Who cleaned in Michael's room?

11 A. Myself.

12 Q. Was your mother ever allowed to clean in Michael's room?

13 MR. GUNN: No foundation of personal knowledge,
14 Your Honor.

15 THE COURT: Sustained.

16 BY MS. DONAHUE:

17 Q. Do you know whether your mother was allowed to clean in
18 Michael's room?

19 MR. GUNN: No foundation unless the --

20 THE COURT: Overruled. The answer is either yes or
21 no.

22 THE WITNESS: No.

23 BY MS. DONAHUE:

24 Q. L.K.xxx, did -- do you know whether your mother got paid
25 for cleaning at Michael's house?

1 A. Yes.

2 Q. How much did she get paid?

3 A. I'm not sure. I would -- I think it was \$35.

4 Q. \$35 for every month; is that right?

5 A. I don't know.

6 Q. L.K.xxx, when your mother lived in Michael's house, where
7 did your mother and your little brother David sleep?

8 A. Bedroom downstairs.

9 Q. Where did you sleep?

10 A. The bedroom upstairs.

11 Q. I'd like you to take a look at Government's Exhibit 1079.

12 Do you know what that is a picture of?

13 A. That would be the bedroom that we all sleep -- slept in.

14 Q. When you say "we all," who do you mean?

15 A. S.R.xxx, S.S.xxx and other girls that just came.

16 Q. When you say "other girls that just came" do you mean girls
17 who came to Michael's house?

18 A. Yes.

19 Q. At Michael's house, did you have any jobs?

20 A. I change his pillowcases, his bed sheets. I made tea and
21 coffee for him. And sometime I would take food for him.

22 Q. Where would you take the food?

23 A. After the food was cooked, I would bring the food to the --
24 the TV -- television area.

25 Q. Besides doing those jobs, L.K.xxx, did you go to school

1 when you lived at Michael's house?

2 A. Yes.

3 Q. Where did you go to school?

4 A. There was a school nearby the house.

5 Q. How did you get to the school?

6 A. I walked there.

7 Q. Do you know who paid for you to go to school?

8 A. Michael.

9 Q. L.K.xxx, did you have any other jobs in the house?

10 A. Do you want to ask me about the bad thing that had happened
11 to me?

12 Q. Did bad things happen to you at Michael's house?

13 A. Yes.

14 Q. Let's start with the first time that something bad happened
15 to you at Michael's house.

16 Do you remember what room it happened in?

17 A. My bedroom.

18 Q. What happened the first time something bad happened to you
19 in Michael's house in your bedroom?

20 A. I usually go clean his room and after Sang gave me the soft
21 drink. After I drank the soft drinks, I came back to my room, I
22 felt a little sleepy.

23 When I came to my room, I tried to lied on my bed and
24 then I tried to open my eyes, and I saw Michael's naked.

25 Then he came and he tied me. At the time when he tied

1 me, I tried to come down -- come off the bed and Sang tried to
2 beg him. I spoke in Cambodian. I said to him that, "Let me
3 clean your house but please don't rape me."

4 But he -- but he couldn't understand me. But he was
5 talking to Sang and then Sang left the room. And then he
6 continue tie me down. I started screaming and he slapped me.
7 And I scream again and he slapped me.

8 And then after that, I stop screaming. At the time he
9 was hitting me, I -- I saw someone try to look through the
10 window. That was Sang. After I realize I woke up, I saw blood
11 on the bed. And then there was another girl who took me into
12 the restroom and help me clean up.

13 And she took me to the watch TV with him.

14 Q. Were you in pain?

15 A. Yes.

16 Q. Where did it hurt?

17 A. At the private sex part.

18 Q. Were you bleeding?

19 A. Yes.

20 Q. Did you bleed for a couple of days?

21 A. I don't remember.

22 Q. Did anyone take you to a doctor?

23 A. No.

24 Q. L.K.xxx, what did he use to tie you up?

25 A. It was soft. Soft strings.

1 MS. DONAHUE: Could I have Government's Exhibits 1174
2 and 75, physical exhibits.

3 Q. Can you just --

4 A. It is soft silky like this, but I'm not sure about the
5 color.

6 MS. DONAHUE: Could I have Government's Exhibit 1175.

7 MR. GUNN: For the record, Your Honor, could they
8 reflect which exhibit that was that they she just testified
9 about?

10 THE COURT: Was that 1174?

11 AGENT PHILLIPS: 1174, Your Honor.

12 THE WITNESS: I don't remember the color, but as far
13 as the material, the texture and everything is the same.

14 BY MS. DONAHUE:

15 Q. L.K.xxx, can you explain what he did when he tied you up?

16 A. At first he came and he took off my clothes. After he took
17 off my clothes, he tied me.

18 Q. How did he tie you?

19 A. My legs together and my wrist was tied together. And then
20 he lift up my legs and then he raped me.

21 Q. L.K.xxx, was that the only time that Michael raped you?

22 A. No. Many times.

23 Q. I want you to think for a minute about the second time that
24 he raped you.

25 Where did that happen?

1 A. In his bedroom.

2 Q. That second time, did Michael give you any medicine first?

3 A. Maybe.

4 Q. Do you remember?

5 A. I don't remember.

6 Q. Now, the second time, did Michael tie you up?

7 A. No.

8 Q. What did he do?

9 A. He put a pillow on my face.

10 Q. Did he do anything else?

11 A. There was another girl there, told me to bite on the
12 pillow. And he took his -- both of his hands and hold down both
13 of my wrists, and then he just raped me.

14 Q. When he took his hands and held down your wrists, did it
15 hurt?

16 A. Yes. And I didn't have any energy to fight back.

17 Q. Now, L.K.xxx, do you remember talking to Gary Phillips
18 about this back in June of 2006?

19 A. Yes.

20 Q. Do you remember telling him that the second time Michael
21 raped you, he did tie you up?

22 MR. GUNN: Objection. Hearsay, Your Honor.

23 THE COURT: Sustained.

24 BY MS. DONAHUE:

25 Q. Let me ask a question.

1 Do you remember now clearly what happened the second
2 time that Michael raped you?

3 A. Yes.

4 Q. And can you describe how you felt when he put his hands on
5 your wrists?

6 A. When he hold down my wrist tightly and he covered my face
7 also at the time, and I felt like he was tying me down.

8 Q. After that second time, did he rape you again?

9 A. Yes.

10 Q. Do you remember what happened the third time?

11 A. I was -- I'm not clear.

12 Q. L.K.xxx, do you know how many times Michael put his penis
13 inside your vagina during the time that you lived at his house?

14 A. I cannot recall how many times, but many times.

15 Q. Do you remember about how many times a week it would
16 happen?

17 A. Sometimes every day; sometimes two, three days.

18 Q. Now, besides putting his penis inside your vagina, did he
19 also have you give him massages?

20 A. Yes.

21 Q. What would you do when you gave him a massage?

22 A. After the massage, sometimes he would ask me to suck on his
23 private part.

24 Q. Did you do that?

25 A. Yes.

1 Q. When you say his private part, do you mean his penis?

2 A. Yes.

3 Q. About how many times did he have you suck on his private
4 part?

5 A. I don't recall.

6 Q. Was it more times than he put his penis into your vagina?

7 A. Okay. I think sucking his private sex part was more.

8 Q. When you would suck on his penis, where were you?

9 A. I would be on his bed in his bedroom.

10 Q. And what would you wear?

11 A. Nothing.

12 Q. Do you remember whether Michael had any marks or spots
13 anywhere on his body?

14 A. Yes. There was a growth.

15 Q. Where?

16 MR. GUNN: I'm sorry, Your Honor, I did not hear that
17 word. There was a --

18 THE COURT: Growth.

19 THE WITNESS: It was near by his private sex part.

20 BY MS. DONAHUE:

21 Q. Can you describe what that growth looked like?

22 A. Small, the color is like skin color.

23 Q. What shape was it?

24 A. About this size (indicating). Small.

25 THE COURT: I can't see how far her fingers are.

1 MS. DONAHUE: I can't see either.

2 THE COURT: Does it look like a quarter inch, half an
3 inch?

4 THE INTERPRETER: Just about, Your Honor, yes.

5 THE COURT: Just about what?

6 THE INTERPRETER: A quarter inch.

7 THE COURT: Thank you.

8 BY MS. DONAHUE:

9 Q. L.K.xxx, was anyone else in the bedroom when you would suck
10 on Michael's penis?

11 A. Yes. Sometime there is; sometime no.

12 Q. Thinking about sometimes when other people were there, who
13 else was there?

14 A. S.R.xxx, S.S.xxx, TCx, and there is another girl I cannot
15 recall her name.

16 Q. When you say TCx, do you mean T.C.xx?

17 A. Yes.

18 Q. What were the other girls doing when you all were in the
19 bedroom and you would suck Michael's penis.

20 A. Sometime other girls would suck on him and I watched and
21 sometimes would be my turn and they watched.

22 Q. Did you ever see S.R.xxx suck on his penis?

23 A. Yes.

24 Q. Did you ever see S.S.xxx suck on his penis?

25 A. Yes.

- 1 Q. Did you ever see T.C.xx suck on his penis?
- 2 A. Yes.
- 3 Q. What would happen when you sucked on his penis?
- 4 A. The sperm came out.
- 5 Q. What would you do?
- 6 A. We would all ran to the restroom.
- 7 Q. What would you do in the restroom?
- 8 A. We washed our mouth. Rinse off our mouth.
- 9 Q. L.K.xxx, did Michael ever give you any money?
- 10 A. Yes.
- 11 Q. When did he give you money?
- 12 A. Whenever he -- after he raped me and after he asked me to
- 13 suck him.
- 14 Q. Did he give you money every time after he raped you?
- 15 A. Yes.
- 16 Q. How much money did he give you?
- 17 A. \$1.
- 18 Q. Did he give you money after you sucked on his penis?
- 19 A. Yes.
- 20 Q. How much would he give you?
- 21 A. \$1.
- 22 Q. In addition to the money after he raped you and the money
- 23 after you sucked on his penis, did he give you more money?
- 24 A. Yes.
- 25 Q. What was that money for?

1 A. He said that that's the money for my salary and also for
2 what he was doing to me.

3 Q. What did you do with the money?

4 A. Sometimes I would spend the money for the food at school
5 and to buy clothes. And sometimes I would give it to my little
6 brother.

7 Q. Now, L.K.xxx, did Michael rape you during the time that
8 your mother was living at Michael's house?

9 A. No.

10 Q. Did there come a time when your mother and your younger
11 brother David left Michael's house?

12 A. Yes.

13 Q. Why did they leave Michael's house?

14 A. My brother was crying all the time and he didn't like that.
15 He told her to go.

16 Q. When you say he didn't like that, who do you mean?

17 A. Michael.

18 Q. Did you leave with your mother and your little brother?

19 A. No.

20 Q. Why not?

21 A. I liked the house and I wanted to go to school.

22 Q. When you lived with your mother, did you go to school?

23 A. Yes.

24 Q. Before you came to Michael's house when you were at your
25 mother's house, did you go to school every day?

1 A. Yes.

2 Q. Could your mother afford to send you to school?

3 A. No. You mean at the time when I was living with my mother?

4 Q. Before you got to Michael's house.

5 A. No.

6 Q. Okay. Just so we're clear, I'll ask you the question
7 again. Please tell me if you want me to repeat a question.

8 I'm talking about the time before you came to live at
9 Michael's house.

10 A. Yes.

11 Q. Did your mother have enough money to send you to school?

12 A. No.

13 Q. L.K.xxx, do you like school?

14 A. Yes.

15 Q. L.K.xxx, did Michael ever say anything to you about getting
16 married to you?

17 A. Yes.

18 Q. What did he tell you?

19 A. He told Sang and Sang told me that --

20 MR. GUNN: Your Honor, objection. Hearsay.

21 THE COURT: Sustained.

22 MR. GUNN: Move to strike the prior answer, lack of
23 personal knowledge and hearsay.

24 THE COURT: That will be stricken.

25 MS. DONAHUE: It's offered for effect --

1 THE COURT: I can't hear you.

2 MS. DONAHUE: It's offered for effect on the listener,
3 not truth of the matter asserted, Your Honor.

4 THE COURT: All right. I will allow it.

5 Ladies and gentlemen, this testimony is offered only
6 for the effect that it has on this witness, not for the truth of
7 the matter and -- in other words, not for what Michael may or
8 may not have said but only for what impact what Sang said had on
9 this witness.

10 MR. GUNN: Objection for that purpose on relevance
11 ground, Your Honor.

12 THE COURT: Go ahead.

13 BY MS. DONAHUE:

14 Q. L.K.xxx, did Michael ever say anything to you about getting
15 married?

16 A. Yes.

17 Q. What did he say?

18 A. He said he would marry me when I turn 18.

19 Q. And did you believe him?

20 A. Some.

21 Q. Now, L.K.xxx, after your mother left Michael's house, you
22 stayed; is that right?

23 A. Yes.

24 Q. Did you ever tell your mother about the bad things that
25 Michael was doing to you?

1 A. No.

2 Q. How come?

3 A. If I were to tell her, she couldn't help me.

4 Q. What do you mean?

5 A. I was thinking that Michael was a powerful man, someone
6 important because I saw him taking picture with -- if I were to
7 tell my mom and she didn't believe me -- if she didn't believe
8 me, Sang would take me away and would sell me in other places.

9 Q. Now, L.K.xxx, going back, when Michael would put his penis
10 inside you, did he ever rub anything on himself?

11 A. He used like some sort of oil.

12 Q. What kind of a container was that oil in?

13 A. Like a tube, plastic tube.

14 Q. Was it a clear oil or a cream?

15 A. Clear. Clear.

16 Q. Did he -- do you remember where he kept that oil?

17 A. Sometime he kept it in his room, and sometimes someone
18 would take it and put it in the maid's room.

19 Q. Do you remember where that bottle of oil was located on the
20 day that the police came to Michael's house?

21 A. I believe it would -- was inside the bedroom of the cook
22 lady.

23 Q. Can you take a look at a photograph which is Government
24 Exhibit 1138.

25 What is that a photograph of?

1 A. That's the -- that's the bottle. That's the bottle.

2 Q. Is that the bottle of oil that you were just talking about?

3 A. Yes.

4 Q. Now, L.K.xxx, after the police came to Michael's house, and
5 after you left Michael's house, did there come a time when you
6 talked in court in Cambodia?

7 A. After the police took me?

8 Q. Yes.

9 A. Yes.

10 Q. When you were in court in Cambodia, did you ask if Michael
11 could pay money to you?

12 A. During the Court in Cambodia, I did not say that.

13 Q. Did the Court in Cambodia, did somebody ask you if you
14 wanted money from Michael?

15 A. At the Court, no one asked me, but at the police station,
16 someone asked me.

17 Q. What were you asked?

18 A. They asked me if I wanted money from Michael. They said
19 that the money would be for what he had done to me and to buy a
20 house to live in.

21 Q. What did you say?

22 A. Yes. I said yes.

23 Q. And did you say how much money you wanted?

24 A. At first, I don't remember the amount, and later on
25 somebody mention about five something. Five million riel.

1 Something like that.

2 Q. Do you remember somebody mentioning \$50,000?

3 A. Yes. I think so. Yes. That's right.

4 Q. What did you want that money for?

5 A. For the pain he had caused me and for my mother that he
6 told the police that my mother sold me and -- and they took my
7 mother, put her in prison.

8 Q. Did you want the money for your mother?

9 A. I don't know.

10 Q. Now, L.K.xxx, going back to the time that you were staying
11 at Michael's house, did Michael ever take any photographs of you
12 when you were naked?

13 A. Yes.

14 Q. And did he do that more than once?

15 A. Yes.

16 Q. Do you remember where you were when he took the pictures?

17 A. Sometimes in my bedroom. Sometimes in the restroom and
18 sometimes on his bed.

19 Q. Did you want him to take pictures of you naked?

20 A. No.

21 Q. I would ask if Government's Exhibit 1017 could be placed
22 before the witness.

23 What is that a photograph of?

24 A. My picture.

25 Q. Where are you?

1 A. Right here.

2 Q. I'm sorry. I asked a bad question. Where are you in that
3 photograph? What room are you?

4 THE INTERPRETER: I'm sorry, counsel?

5 BY MS. DONAHUE:

6 Q. What room are you in in that photograph?

7 A. That's in Michael's bedroom.

8 Q. Who took that photograph?

9 A. Michael.

10 Q. Who are you with?

11 A. Ngoc.

12 MS. DONAHUE: Move 1017 into evidence.

13 THE COURT: It will be admitted.

14 (Government's Exhibit 1017 was received)

15 BY MS. DONAHUE:

16 Q. L.K.xxx, are you smiling in that picture?

17 A. Yes.

18 Q. Were you happy?

19 A. No. He showed me that -- to smile, to pull my cheek.

20 Q. Who showed you to pull your cheek to smile?

21 A. Michael.

22 MS. DONAHUE: Could Government's Exhibit 1016 be
23 placed before the witness.

24 Q. L.K.xxx, who is in that picture?

25 A. Myself.

1 Q. Are you with another girl?

2 A. Yes.

3 Q. What is her name?

4 A. Ngoc.

5 Q. Who took that photograph?

6 A. Michael.

7 MS. DONAHUE: Move 1016 into evidence.

8 THE COURT: Admitted.

9 (Government's Exhibit 1016 was received)

10 BY MS. DONAHUE:

11 Q. L.K.xxx, did somebody pose you that way for the camera?

12 A. Michael helped me.

13 Q. What did Michael do?

14 A. He came and instructed me what to do and positioned my legs
15 in certain way.

16 Q. Did he position your legs that way for the camera?

17 A. Yes.

18 Q. L.K.xxx, this picture is taken in Michael's bedroom; is
19 that right?

20 MR. GUNN: Objection. Leading.

21 THE COURT: Overruled.

22 BY MS. DONAHUE:

23 Q. Did Michael take pictures of you in other rooms in the
24 house?

25 A. Yes.

1 Q. Do you remember what other rooms?

2 A. The restroom and my bedroom.

3 MS. DONAHUE: I would ask if Government's Exhibit 2086
4 could be placed before the witness.

5 Q. L.K.xxx, what are those pictures of?

6 A. That's my picture.

7 Q. Who took those pictures?

8 A. Michael.

9 MS. DONAHUE: Move 2086 into evidence.

10 THE COURT: Admitted.

11 (Government's Exhibit 2086 was received)

12 BY MS. DONAHUE:

13 Q. Now, L.K.xxx, I would like you to take a look around the
14 courtroom and tell me if you see Michael in the courtroom.

15 THE INTERPRETER: Pointing.

16 THE COURT: Tell me where you are pointing, please,
17 L.K.xxx. Are you pointing to the table over there?

18 THE WITNESS: The one holding the glasses.

19 THE COURT: Indicating Mr. Pepe --

20 THE WITNESS: And he's looking at me. And he's
21 sitting next to the gentleman putting his hand on his mouth.

22 THE COURT: Thank you. The witness has identified
23 Mr. Pepe.

24 BY MS. DONAHUE:

25 Q. L.K.xxx, during the time that you were at Michael's house,

1 did any man, other than Michael, put his penis inside your
2 vagina?

3 A. No.

4 Q. During the time that you were at Michael's house, did any
5 man, other than Michael, have you suck on his penis?

6 A. No. Just Michael.

7 Q. During the time that you were at Michael's house, did any
8 man other than Michael hurt you?

9 A. No. Just Michael alone.

10 MS. DONAHUE: I have no further questions.

11 THE COURT: Thank you.

12 Ladies and gentlemen, we will take our 15 minute
13 break. Don't talk about the case or form or express any
14 opinions about the case until it's finally submitted to you.

15 (Recess taken)

16 (Jury In)

17 THE COURT: All right. Everyone is present. The
18 interpreter is still under oath.

19 L.K.xxx, remember you swore to tell the truth. You
20 have to keep doing that. Okay.

21 You may proceed.

22 CROSS-EXAMINATION

23 BY MR. GUNN:

24 Q. L.K.xxx, my name is Carl Gunn, and I'm one of Michael
25 Pepe's attorneys. And I need to ask you some questions.

1 Michael did send you to school while you were living
2 at his house; correct?

3 A. Yes.

4 Q. And he even had one of your teachers come over to give you
5 tutoring in English; right?

6 A. Yes.

7 Q. That teacher came over three days a week, didn't he?

8 A. I don't remember.

9 Q. He tutored both you and the other girls who were living in
10 the house; correct?

11 A. The teacher?

12 Q. Yes.

13 A. Yes.

14 Q. And speaking of the other girls in the house, two of them
15 were named S.R.xxx and S.S.xxx; correct?

16 A. Yes.

17 Q. And they were sisters; right?

18 A. I don't know.

19 Q. Well, their mother came over to visit them at the house;
20 right?

21 A. Yes.

22 Q. Her name was Cum Lang; right?

23 THE INTERPRETER: I am sorry, counsel. Can you say
24 the name again?

25 MR. GUNN: Yes. I am sorry for the pronunciation. I

1 can spell it, if you like. Cum Lang.

2 THE WITNESS: I don't know.

3 BY MR. GUNN:

4 Q. But she was the mother of both of them; right?

5 A. Yes.

6 Q. So they were sisters.

7 A. I know they're siblings but I don't know if it's first
8 blood siblings or not. I don't know.

9 Q. In fact, their mother came over quite often, didn't she?

10 A. Their mother?

11 Q. Yes. The mother of S.R.xxx and S.S.xxx.

12 A. Two, three times.

13 Q. Well, do you remember when Gary Phillips, the man who is
14 sitting here at the table, interviewed you soon after the police
15 came to the house?

16 A. Yes.

17 Q. You told him that S.R.xxx's and S.S.xxx's mother came over
18 quite a lot, didn't you?

19 A. The mother would just come and pick up her daughters from
20 the gate outside the gate quite often, but not come into the
21 house.

22 Q. Well, didn't you tell Gary Phillips, quote, I saw her mom
23 come visit very often, unquote? Referring to S.R.xxx and
24 S.S.xxx?

25 A. I don't remember.

1 Q. Would it refresh your memory about what you told Gary
2 Phillips if you were able to listen to a part of the interview
3 on videotape? Actually, let me rephrase that question.

4 Would it help you remember if you were able to listen
5 to part of the videotape of that interview?

6 A. I don't know. I just remember she came inside the house
7 two, three times, but -- but she usually waited outside the gate
8 and -- and took her kids with her.

9 Q. That's not quite what I'm asking right now, L.K.xxx. Right
10 now I'm asking about what you told Gary Phillips about that just
11 a few days after the police came.

12 So let me explain a little more carefully what I'm
13 asking right now and listen to what I'm saying. I will try to
14 be as clear as I can.

15 I believe you told me you don't remember exactly what
16 you told Gary Phillips about that; right?

17 A. Yes.

18 Q. And what I'm asking you is just not what you remember now.
19 I'm asking you if you were able to listen to a videotape of that
20 interview by Gary Phillips whether that would help you remember
21 what you told him about this. If you listened to the actual
22 interview, would that help you remember what you told him?

23 A. Yes.

24 MR. GUNN: All right. What I would ask to do,
25 Your Honor, is to play the first tape or first section of the

1 recording called CD 1 on my materials from minute 18:55 through
2 minute 19:26. Those are minutes and seconds. And I believe the
3 prosecutor had indicated there is a mechanism for the witness to
4 listen alone.

5 THE COURT: All right. Let's do that.

6 MR. GUNN: And I can repeat those minute numbers if I
7 need to.

8 AGENT WANG: Which part, Counsel?

9 MR. GUNN: Starting at minute 18, seconds 55 and going
10 through minute 19, seconds 26.

11 AGENT WANG: First CD, which part?

12 MR. GUNN: There should be CD 1, CD 2, and CD 3, and
13 this would be No. 1.

14 AGENT WANG: Okay. And then you say 18:55; right?

15 MR. GUNN: Yes. Through 19:26.

16 AGENT WANG: 19:26.

17 MR. GUNN: Could you stop it at 19:26, please.

18 AGENT WANG: Sure.

19 (Whereupon, the CD was played for the witness)

20 MR. GUNN: If the witness could take the headphones
21 off, Your Honor.

22 Q. L.K.xxx, does that help you remember what you told Gary
23 Phillips just a few days after the police came? L.K.xxx, right
24 now I am just asking "yes" or "no" whether that helps you
25 remember. Does that help you remember what you said to Gary

1 Phillips about that?

2 A. I cannot -- no.

3 Q. Listening to the actual interview does not help you
4 remember what you said?

5 A. I just heard that I said that she came often.

6 Q. Does that help you remember that that's what you said to
7 Gary Phillips?

8 A. Yes.

9 Q. And you did say that to him; right?

10 THE INTERPRETER: Sorry, counsel?

11 BY MR. GUNN:

12 Q. You did say that to him; right?

13 A. Yes.

14 MR. GUNN: Thank you. I would now like -- Your Honor,
15 may I inquire as to whether Government Exhibit 1007 is in
16 evidence already?

17 Your Honor, could I have Government Exhibit 1007
18 placed in front of L.K.xxx?

19 THE COURT: Does the Government have any objection to
20 that exhibit coming it in?

21 MS. DONAHUE: No, Your Honor.

22 THE COURT: All right. That will be admitted. You
23 may show it.

24 (Government's Exhibit 1007 was received)

25 MR. GUNN: I can just put my copy up rather than

1 giving it to the witness, Your Honor.

2 THE COURT: Please.

3 BY MR. GUNN:

4 Q. L.K.xxx, would you look at the photograph up on the screen
5 or on your screen.

6 And that's a photograph that was taken at the house;
7 right?

8 A. Yes.

9 Q. And you're in that photograph; correct?

10 A. Yes.

11 Q. That's you on the right?

12 THE COURT: Why don't you point, Mr. Gunn.

13 BY MR. GUNN:

14 Q. That's you where my pen is pointing?

15 A. I'm in the white dress.

16 Q. Is that S.R.xxx?

17 A. S.S.xxx.

18 Q. And that's S.R.xxx?

19 A. Yes.

20 Q. And this is the girl that you call Ngoc?

21 A. Yes.

22 Q. And did Mr. Pepe or Michael also call her Nap?

23 THE INTERPRETER: I am sorry. Can you say that name
24 again?

25 MR. GUNN: Nap. The way I have it spelled is N-A-P.

1 THE WITNESS: I don't remember.

2 BY MR. GUNN:

3 Q. I think you testified also, when the prosecutor asked you
4 questions, that you were 14 years old, about to turn 15?

5 A. Yes.

6 Q. You actually don't know exactly how old you are, do you?

7 A. I do know. I looked in the family book. My grandmother
8 told me I was born in 1993.

9 MR. GUNN: Move to strike, Your Honor, as hearsay.

10 THE COURT: Overruled.

11 BY MR. GUNN:

12 Q. When you were interviewed by Gary Phillips, you told him
13 you didn't know what year you were born in; right?

14 A. Yes. But when I came to live in the center, my
15 grandmother --

16 MR. GUNN: Objection, Your Honor, hearsay, and I
17 believe the witness has answered.

18 THE COURT: You don't need to translate the rest of
19 the answer.

20 MR. GUNN: Your Honor, I would like to place an
21 exhibit in front of the witness who -- which has been premarked
22 as 102. If I could approach.

23 THE COURT: All right.

24 MR. GUNN: I am sorry. 302.

25 THE COURT: All right. Does Government have a copy?

1 MR. GUNN: Yes. And there is an extra copy for the
2 Court. I have shown this previously to the Government,
3 Your Honor, so they know I am going to be showing it to her.

4 Q. Don't look at that yet, L.K.xxx, for now.

5 You testified earlier you said that -- well, I guess
6 you said Michael abused you; right?

7 A. Yes.

8 Q. And you talked about a mark or something that he had on his
9 thigh?

10 A. Yes.

11 Q. That mark was -- you said before it was red; right?

12 A. Yes. Reddish like the skin. Red.

13 Q. I need to show you a photograph that may embarrass you and
14 I apologize for that. But I need to ask you a couple of
15 questions about it. All right? I would like you to look at
16 Defense Exhibit 302.

17 Your Honor, with the Court's permission so the jury --

18 THE COURT: Paul, turn off the --

19 MR. GUNN: I can't really cover so -- I'm sorry. The
20 screen.

21 THE COURT: Now only the jury can . . .

22 BY MR. GUNN:

23 Q. That's a photo of part of a man's body; right?

24 THE INTERPRETER: What's your question, counsel?

25 BY MR. GUNN:

1 Q. I'm sorry. L.K.xxx, I am sorry, that is a photo of part of
2 a man's body, right?

3 A. Yes.

4 Q. And it shows his inner legs; right? His thighs?

5 A. Yes.

6 Q. And on the inside of one of the legs is a red mark; right?

7 THE COURT: Why did you turn that off, Mr. Lulejian?

8 MR. LULEJIAN: I am sorry, Your Honor.

9 THE INTERPRETER: Can you ask the question again,
10 counsel?

11 MR. GUNN: Yes. If I could, I'll point.

12 Q. On the inside of his thigh where I'm pointing my pen is a
13 red mark; right?

14 A. That's not it.

15 Q. How certain are you that that's not it? Are you positive
16 that's not the man?

17 A. That's -- that piece of skin is like a growth.

18 MR. GUNN: Your Honor, I would offer Defense
19 Exhibit 302 into evidence -- I won't offer it at this time,
20 Your Honor. I will offer it later.

21 THE COURT: All right.

22 BY MR. GUNN:

23 Q. You testified earlier that you were given some sort of
24 medicine the first time you were -- you say you were abused by
25 Michael; right?

1 A. Sang gave me the soft drink.

2 Q. And you saw some sort of medicine or something put in it?

3 A. I saw like a powder or something and she put it in there.
4 She said it was white sugar.

5 Q. So it was a powder, not a pill; is that right?

6 A. It's like in a package, white package, small.

7 Q. So it was in a white package?

8 A. Yeah. I don't exactly recall.

9 Q. And it was a powder; right?

10 A. Yes. Something like powder.

11 Q. In fact, you told Gary Phillips when he interviewed you a
12 few days after the police that it was a package of powder;
13 right?

14 A. Yes.

15 Q. And you told him that the powder was sort of white, kind of
16 gray; right?

17 A. I don't know.

18 Q. Would it help you remember if you were able to listen to a
19 part of the videotape where you talked to him about that like
20 you did before to my questions?

21 A. Yes.

22 MR. GUNN: Your Honor, if I could have played, I guess
23 on the headphones again, it would be the same first session of
24 the interview from minutes -- let's see. It would be 58 --
25 minute 58, second 14 through minute 59, second 10. And if I

1 could ask the agent to watch the time carefully and stop it on
2 his own when he gets to 59:10, rather than checking with me.

3 THE COURT: All right.

4 MR. GUNN: If the Government wants to look in
5 transcripts, it's on Pages 28 and 29.

6 (Whereupon, the CD was played for the witness)

7 THE COURT: You may proceed.

8 BY MR. GUNN:

9 Q. Does that help you remember what color you said the powder
10 was?

11 A. Yes.

12 Q. And you said it was, quote, white comma -- I'm sorry.
13 Quote, white, kind of gray; right?

14 A. Yes.

15 Q. Did the agents ever show you any packages of that color
16 powder that they found in the house for you to identify as this
17 medicine you say you were given?

18 A. Who? Who would show me?

19 Q. Did any officer, either Cambodian police officer or
20 American police officer, show you any package of that color
21 powder --

22 A. No.

23 Q. Now, there was a massage table in the house; correct?

24 A. Yes.

25 MR. GUNN: Your Honor, I would like to put that

1 Government exhibit in front of the witness, and if the
2 Government could help me identify it, the number, that would
3 speed things up. I apologize. 1154, Your Honor. If I could
4 have -- actually, is that the massage table or just the --
5 actually it would be 1116, Your Honor. If I could have the
6 witness look at 1116.

7 THE COURT: We need the screen back on, Paul.

8 MR. GUNN: I'm sorry, Your Honor. That's -- it would
9 be 1113, Your Honor. 1116 is a close up.

10 THE COURT: Thank you.

11 BY MR. GUNN:

12 Q. L.K.xxx, do you have that photograph in front of you and do
13 you see it on the screen? It's called Defense Exhibit 1113.

14 A. Yes.

15 Q. And that's a photograph of a massage table that was in the
16 house; right?

17 A. Yes.

18 Q. You and the other girls did at times give Michael massages
19 on this massage table, didn't you?

20 A. Yes.

21 Q. But Michael had his clothes on during those massages,
22 didn't he?

23 A. Sometimes, yes. Sometimes no.

24 Q. Well, actually, L.K.xxx, isn't it true that he always had
25 his clothes on when you gave him massages?

1 A. Not true.

2 Q. Isn't it true that they really weren't sex or sexual
3 massages?

4 THE INTERPRETER: I am sorry. Can you repeat the
5 question?

6 BY MR. GUNN:

7 Q. Isn't it true that they really weren't sex or sexual
8 massages?

9 A. You mean not sexual?

10 Q. They were just massaging his muscles with his clothes on,
11 weren't they, on this massage table?

12 A. Yes.

13 Q. In fact, on at least one occasion when you and the other
14 girls living in the house were giving Michael a massage, there
15 was another girl at the house named I.T., wasn't there?

16 A. You mean just massaging?

17 Q. No. Let me break the question up.

18 At one time at the house briefly there was another
19 girl named I.T.; right?

20 A. Yes.

21 Q. And there was a time when you and the other girls were
22 giving Michael a massage on the massage table and she did not
23 want to help; right?

24 A. I don't know. I forgot.

25 Q. Do you remember you and the other girls once telling her

1 she was dumb for not helping with the massage because Michael
2 would give you a dollar if you did these massages on the massage
3 table?

4 A. No.

5 Q. Didn't you try to get I.T. to join you on at least one
6 occasion in giving Michael a massage on this massage table?

7 A. No.

8 Q. You identified or said there was a rope, you called it, in
9 the house that was made out of that material that you identified
10 on direct examination.

11 Do you remember that?

12 A. Yes.

13 Q. And you claim that Michael used that rope to tie you up to
14 abuse you; right?

15 A. The same as that one?

16 Q. If not that one, one like it was what you said; right?

17 A. It's not exactly the same.

18 Q. But one like that you're saying?

19 THE INTERPRETER: Sorry. Can you repeat --

20 BY MR. GUNN:

21 Q. You're saying it was one like that; is that right?

22 A. It's been a long time. I don't really remember exactly
23 what the tie looked like, but similar.

24 Q. That rope or one similar to it you girls also used when you
25 were playing to tie each other up; right?

1 A. No.

2 Q. Isn't it true that that's all that rope got used for, at
3 least as far as you know?

4 THE INTERPRETER: Sorry?

5 MR. GUNN: I'll withdraw the question, Your Honor.

6 Q. You're staying at a shelter right now; correct?

7 A. Right now?

8 Q. Yes.

9 A. No.

10 THE COURT: She is in the courtroom right now,
11 Mr. Gunn.

12 MR. GUNN: I'm sorry.

13 Q. The place you're living in Cambodia before you flew over
14 here is a shelter or an organization with a home called Agape;
15 right?

16 A. Yes.

17 Q. And you have been there -- have you been there ever since
18 the police came to the house?

19 A. No.

20 Q. When did you start staying there?

21 A. After I left the police, I went to World Hope. After World
22 Hope, I went to Agape.

23 Q. About how long was that after the police came to Michael's
24 house that you went to Agape?

25 A. Since when?

1 MR. GUNN: I'm sorry, I didn't hear the English.

2 THE INTERPRETER: Since when?

3 BY MR. GUNN:

4 Q. That's what I'm asking you. How long were you at World
5 Hope before you went to Agape?

6 A. Maybe two months.

7 Q. And ever since then, you have been living at Agape?

8 A. Yes.

9 Q. And they're letting you stay there or having you stay there
10 because of what you have told them about being abused; right?

11 A. I don't know. The police took me and I told my story to
12 them.

13 Q. You know it's because of your story that they are letting
14 you or having you stay at a place like Agape; right?

15 A. I don't know. I'm not sure.

16 Q. Well, there are other girls who have been abused or been
17 the victims of sex trafficking and those kinds of things; right?

18 A. Yes.

19 Q. And there is lots of other girls in Cambodia who live in
20 poor circumstances who don't get to stay at a place like that;
21 right?

22 A. I know.

23 Q. I'm sorry?

24 THE INTERPRETER: I know.

25 BY MR. GUNN:

1 Q. By the way, the person who is up there with you right now
2 standing behind you, is she from the center, the Agape?

3 A. Yes.

4 Q. And one of the -- one of the head people at Agape is also
5 here sitting in back; right?

6 A. Yes.

7 Q. Is the shelter a pretty nice place?

8 A. Very nice.

9 Q. Is it a lot nicer than where you lived before you went to
10 Michael's house?

11 A. There are some places that are better than that. There are
12 some places that are the same.

13 Q. I'm sorry, it's better than the house you had lived in with
14 your family before you went to Michael's house; right?

15 THE INTERPRETER: I am sorry. You meant --

16 MR. GUNN: I'm sorry. Let me withdraw the question
17 and ask some other question.

18 Q. There is a lot of benefits you get at this shelter; right?

19 A. Yes.

20 Q. They send you to school?

21 A. Yes.

22 Q. And you didn't get to go to school before you went to
23 Michael's house, did you?

24 A. Before?

25 Q. Yes.

1 A. Yes.

2 Q. And the rooms are nicer at the shelter than where you lived
3 with your family; right?

4 A. Which room?

5 Q. The rooms you stay in at the shelter and, in fact, the
6 whole building is nicer than the house you lived in with your
7 family before Michael; right?

8 A. Better than my home?

9 Q. Yes.

10 A. Yes.

11 Q. And the food that you get there is better and more complete
12 than when you lived with your family before going to Michael's
13 house; right?

14 A. Before I go to Michael's house?

15 Q. Yes.

16 A. Yes.

17 Q. And it's fair to say, isn't it, that your understanding is
18 the only reason you're getting to stay there is because they
19 believe you were abused by Michael; right?

20 THE INTERPRETER: Can you repeat that last sentence?

21 MR. GUNN: Yes, let me withdraw the question and
22 rephrase it maybe simpler.

23 Q. You wouldn't get to stay at the shelter if you said it
24 wasn't really true that you were abused by Michael, would you?

25 MS. DONAHUE: Objection. Calls for speculation.

1 THE COURT: Just whatever she believes. So --

2 MR. GUNN: That's --

3 THE COURT: -- go ahead and -- did you interpret the
4 question?

5 THE INTERPRETER: No, I did not.

6 THE COURT: Why don't you rephrase the question.

7 MR. GUNN: Rephrase it or repeat it?

8 THE COURT: Either one.

9 BY MR. GUNN

10 Q. You wouldn't get to stay at Agape if you said it wasn't
11 true that you were abused by Michael, would you?

12 A. I don't know.

13 Q. Well, isn't it true that you know that you only get to
14 stay -- that girls only get to stay there if they are people who
15 have been abused by someone or in some other way victimized?

16 A. Yes.

17 Q. And, in fact, four of the other girls who are testifying in
18 this case are living at the same shelter at Agape also, aren't
19 they?

20 A. Living in Agape like me?

21 Q. Yes.

22 A. Yes. Yes.

23 Q. So you and they have been able to talk about the case and
24 your testimony, haven't you?

25 A. Yes.

1 Q. Now, the police came to Michael's house. It was almost two
2 years ago now; right?

3 A. I'm not sure.

4 Q. It was a long time ago, though, right?

5 THE INTERPRETER: I'm sorry?

6 BY MR. GUNN:

7 Q. It was a long time ago, though, right?

8 A. Yes.

9 Q. And you were interviewed several times by several different
10 people; right?

11 A. What do you mean different people?

12 Q. Okay.

13 Well, you were interviewed by a person from the -- I'm
14 sorry. You were interviewed by a person from the International
15 Justice Mission or a non-governmental organization that took you
16 from the house when the police came; right?

17 THE INTERPRETER: That took? I am sorry. What's
18 that?

19 MR. GUNN: I'm sorry.

20 Q. You were interviewed by a person from the International
21 Justice Mission or a non-governmental organization that took you
22 from the house; right? The same day or the next day after you
23 were arrested -- I'm sorry. After you were taken from the
24 house?

25 A. To come to interview me?

1 Q. When the police came to the house that day, they took you
2 with them or some people took you with them away from the house;
3 right?

4 A. Yes.

5 Q. And it wasn't just the police. They were people who worked
6 for another agency or -- what's called a non-governmental
7 organization; right?

8 A. I don't know who came from the organization.

9 Q. But some organization took you initially that first day;
10 right?

11 A. I don't know.

12 THE COURT: Mr. Gunn, she is a child. Organizations
13 don't come do things.

14 MR. GUNN: I am trying to . . .

15 THE WITNESS: Take me away from the police? Took me
16 from the police station?

17 THE COURT: I am going to make him ask another
18 question. So we will just wait for the next question. Okay?

19 BY MR. GUNN:

20 Q. You didn't actually sleep at the police station the first
21 night, did you?

22 A. The first night?

23 Q. They didn't actually have you sleep at the police station
24 itself?

25 A. Yes, I did. I slept there.

1 Q. Either that day or the next day you were interviewed by
2 some people -- well, let me stop. You were interviewed soon
3 after that by a police colonel, correct, or a police officer?

4 A. I don't remember.

5 Q. You were interviewed by a person from a private group as
6 well; right? That's concerned about children?

7 A. I don't remember.

8 Q. Would it -- well, you were interviewed -- going back to
9 being interviewed by the police, you were interviewed by the
10 Cambodian police; right?

11 A. Yes.

12 Q. And you were interviewed by a doctor named Dr. Watson or
13 Dr. Laura when she did an examination of you a few days after
14 you were arrested; right?

15 A. No. At first when I arrived to the police station, they
16 took me to the clinic.

17 Q. All right.

18 You saw a doctor at the clinic; right?

19 A. Yes.

20 Q. And she did an examination?

21 A. Yes.

22 Q. And she also asked you questions about your history and
23 what had happened; right?

24 A. Yes, she did.

25 Q. And then you were interviewed by a Cambodian police

1 officer; right?

2 A. You mean interview they asked me questions?

3 Q. Yes.

4 A. Yes.

5 Q. And then you were asked questions by -- at a meeting that
6 was videotaped actually by Gary Phillips who is sitting here?
7 Right?

8 THE INTERPRETER: I am sorry. Can you repeat?

9 BY MR. GUNN:

10 Q. And you were also a few days after that asked questions by
11 Gary Phillips who is sitting at the end of this table; right?

12 A. I don't recall how many days but I do remember that he
13 asked me some questions.

14 Q. And then somewhere around that -- this -- that same time
15 period, you were also interviewed by people who weren't police
16 officers from what is called the International Justice Mission;
17 right?

18 A. I don't know who.

19 Q. But someone else; right?

20 A. Yes.

21 Q. And then a few months after all those interviews or
22 questions, you were asked questions by a Cambodian judge; right?

23 A. When I was in the Court, someone asked me.

24 Q. And you have been asked questions or told your story or
25 been asked to tell your story to people at the shelter you

1 stayed at; right?

2 THE INTERPRETER: Can you repeat that question,
3 please?

4 BY MR. GUNN:

5 Q. You have also been asked questions or asked to tell your
6 story by people at the shelter where you are staying at; right?

7 A. Where I'm living right now?

8 Q. Yes.

9 A. Yes.

10 Q. And at the shelter, the World Hope place that you were at
11 for two months before that, you were asked questions; right?

12 A. Yes.

13 Q. And finally, you were interviewed by one of the Government
14 attorneys, Patty Donahue who is sitting here beside me, at least
15 two or three times; right? This woman right here.

16 A. In Cambodia?

17 Q. Well, once she interviewed you in Cambodia and then she has
18 also interviewed you one or two times here; right? By
19 interview, I mean ask questions.

20 A. Yes.

21 Q. And you didn't get your story the same every time you were
22 asked questions, did you?

23 A. No.

24 Q. Well, one important thing you said different things about
25 was the first -- was when the first time was that Michael raped

1 you; isn't that true?

2 THE INTERPRETER: Can you repeat that question?

3 MR. GUNN: Yes.

4 Q. Isn't it true that one thing you said different things
5 about was when the first time Michael raped you was?

6 A. What do you mean the first time?

7 Q. Okay.

8 Well, when you testified on direct examination earlier
9 today -- let me make sure I understand you correctly -- you
10 testified about the first time Michael raped you; right?

11 A. Yes.

12 Q. And one of the things you testified about was when you say
13 that happened; right?

14 A. I don't understand your question.

15 Q. Well, you said that the first time you say he raped you
16 didn't happen until after your mother left; right? That's what
17 you said earlier today; right?

18 A. Yes.

19 Q. But when the people from the organization interviewed you
20 in those first few days after you were arrested, you told them
21 that Michael raped you on the first night you were at his house,
22 didn't you?

23 A. I did not say that.

24 Q. Are you positive you didn't say that to them?

25 A. I don't know.

1 Q. Would it help you remember if the interpreter read to you
2 part of a report they wrote about what you said?

3 A. The last story?

4 Q. Not the last story. This is the first story. Would it
5 help -- I'm sorry.

6 Would it help you remember what you told these
7 organization people about the first time you were raped, when it
8 was, if the interpreter read to you part of a report they wrote
9 about that? Just would it maybe help you remember what you told
10 them?

11 A. I don't know.

12 Q. But it might help? It might help you remember? Because if
13 it would, I would like to have the interpreter read it to you.
14 That's why I'm asking.

15 A. I don't know.

16 MR. GUNN: Your Honor, may I attempt to refresh her
17 recollection?

18 THE COURT: Any objection?

19 MS. DONAHUE: There is not really a failure of
20 recollection shown here, Your Honor.

21 THE COURT: I don't think there has been a convincing
22 failure of recollection.

23 BY MR. GUNN:

24 Q. You also -- you told Dr. Watson, the doctor who saw you,
25 that the first time Michael raped you was after being in the

1 house for just -- let me step back.

2 First of all, your mother was at the house for several
3 months; right?

4 A. Yes.

5 Q. And what you told Dr. Watson about the first time you were
6 raped and when it was, was that it was after being in the house
7 for just one week; right?

8 THE INTERPRETER: How many weeks? I'm sorry, counsel.

9 MR. GUNN: One week.

10 THE WITNESS: I don't know.

11 BY MR. GUNN:

12 Q. Would it help you remember if I had the interpreter read
13 part of Dr. Watson's report? Would that help you remember what
14 you told her?

15 A. Maybe.

16 MR. GUNN: Your Honor, could I --

17 THE COURT: You may.

18 MR. GUNN: With the Court's permission, Your Honor,
19 I'll mark this as 130.

20 (Defendant's Exhibit 130 was marked)

21 MR. GUNN: If I could approach, Your Honor.

22 THE COURT: Yes.

23 MR. GUNN: There is also an extra copy for the Court.
24 I neglected to write a number on it if the clerk . . .

25 Your Honor, with the Court's permission, I would ask

1 the interpreter to read -- at least to start with the first --
2 the second paragraph in history -- well, yes, the second
3 paragraph in history. The first four sentences to start, at
4 least.

5 THE COURT: Please do that.

6 THE INTERPRETER: Do you want me to read out loud?

7 THE COURT: I don't think any of your jurors speaks
8 Cambodian. Okay. We won't understand what you are saying.

9 The reason we are doing this and the reason we are
10 putting the headphones on is because something used in
11 refreshing memory is not evidence, and so it's not something
12 that you should see or hear, and so that's why we are doing it
13 this way.

14 (Whereupon, the interpreter read the document to the witness)

15 MR. GUNN: Has the interpreter read those four
16 sentences?

17 THE INTERPRETER: I did.

18 BY MR. GUNN:

19 Q. L.K.xxx, does that help you remember what you told
20 Dr. Watson about when the first time Michael raped you was?

21 A. I don't remember when I told her.

22 Q. You still don't remember after having that read to you?

23 A. No. I don't know.

24 Q. Okay.

25 You also told the police officer who interviewed you

1 that the first time Michael raped you was a week or about one
2 week after you got to the house; correct?

3 A. When I first arrived? You mean when I first arrived there?

4 Q. Okay.

5 You said you were interviewed soon after the police
6 came to the house by a Cambodian police officer who asked you
7 questions; right?

8 A. Yes.

9 Q. And one of the questions he asked or one of the things you
10 talked to him about was when the first time Michael raped you
11 was; right?

12 THE INTERPRETER: Can you repeat that last statement?

13 MR. GUNN: I don't know if I can. Let me ask the
14 question again.

15 THE COURT: You really need to shorten your questions
16 and break them up, Mr. Gunn. This is just not working.

17 MR. GUNN: I'm sorry. All right.

18 Q. One of the questions the Cambodian police officer asked you
19 was when the first time was that Michael raped you; right?

20 A. Yes.

21 Q. And you told him it was about one week after you got to the
22 house; right?

23 A. No.

24 Q. Are you positive about that? Positive about what you told
25 him?

1 A. Yes.

2 Q. Another thing you talked about the different times people
3 asked you questions was how often Michael supposedly raped you;
4 right?

5 A. I don't understand talk.

6 Q. One of the things that people asked you questions about the
7 different times you were asked questions was how many times
8 Michael raped you; right?

9 A. Yes.

10 Q. And you told the organization people who interviewed you
11 soon after the police came that Michael had sex with you every
12 night; didn't you say that?

13 A. Not true.

14 Q. It's not true that you told them that or it's not true that
15 that happened?

16 A. No.

17 Q. I'm sorry?

18 THE INTERPRETER: "No."

19 MR. GUNN: Bad question.

20 Q. You told -- you told the doctor who saw you, Dr. Watson,
21 that it was two or three times a week, didn't you?

22 A. Two or three weeks?

23 Q. No. Two or three times each week, that's what you told
24 Dr. Watson, wasn't it?

25 A. I don't know.

1 Q. Would it help you remember if the interpreter read a part
2 of Dr. Watson's report to you about what you said about that?

3 MS. DONAHUE: Objection. This calls for hearsay.

4 THE COURT: He is just asking if it would refresh her
5 recollection.

6 Would it help you remember, do you think, L.K.xxx?

7 THE WITNESS: Are you asking me that I told the doctor
8 I was raped two or three times per week?

9 BY MR. GUNN:

10 Q. That was my first question, yes, and I think you said --

11 A. Yes.

12 Q. But you told the Cambodian police officer and the Cambodian
13 judge that it was a total of about 20 times; correct?

14 A. I don't remember.

15 Q. Would it help you remember if you saw a copy of a statement
16 in Cambodian that the police officer wrote up for you and put
17 your fingerprint on?

18 A. I don't know.

19 Q. Would it possibly help you remember?

20 A. I don't know.

21 MR. GUNN: Your Honor, may I attempt to refresh?

22 THE COURT: Let's take a break. Ladies and gentlemen,
23 don't talk about the case or form or express any opinions about
24 the case until it's finally submitted to you. We will take a 15
25 minute break.

1 (Recess taken)

2 (Jury Out)

3 THE COURT: Mr. Gunn, this is beginning to get
4 excruciating, and I compliment you and thank you for your
5 approach to the child witnesses, I think you're being entirely
6 appropriate in your tone and your manner of questioning, and as
7 I said, I thank you.

8 But I have seen this and I have had many of these
9 cases, many with interpreters. It's really difficult to deal
10 with a child witness and an interpreter. And I can't ask you --
11 I probably could, but I'm not going to ask you not to ask
12 leading questions, but they really tend to be incredibly
13 confusing, both to the interpreter and to the witness. And I
14 know that's what Defense lawyers are used to doing, but I don't
15 think you need to do it for every question. And it will move
16 more quickly.

17 I don't know anything about the Cambodian language. I
18 frankly don't even know if it's coming out in a leading manner
19 in that language so it may be defeating the purpose. But your
20 questions are too long, they're convoluted, they start off with
21 clauses that oftentimes don't really connect up with the end.
22 They're compound.

23 And I know it's because you're trying to sort of get
24 all the information in, but if you need to ask two or three
25 questions, I still think that will be easier for the interpreter

1 and the child than doing it the way you're doing it.

2 MR. GUNN: I understand, Your Honor. I'm sort of
3 trying to do that. Maybe I'm just not doing it very well, and I
4 will try harder. I do feel a need to ask leading questions in
5 this area because if I don't, I think she is just going to say
6 the same thing she already said where I am trying to get her to
7 admit, as it's reflected in the reports that I have, that she
8 said something different. So I do think I need to make them
9 leading in some way. I will try to break them up. I have sort
10 of been thinking about that a little bit. I will look at it
11 again.

12 I understand what the Court is saying, and I feel the
13 same way, but I think it's something -- I don't particularly
14 want to do it, but I think I have to do it. There are some
15 things there to bring out, and, of course, we will be calling
16 the impeachment witnesses when we get to our case, which it
17 looks like we will have to do for most of them.

18 THE COURT: All right. And maybe that's just the
19 better way to go.

20 MR. GUNN: All right. Though I -- yeah. Though I
21 do -- I understand.

22 (Recess taken)

23 (Jury In)

24 THE COURT: Everyone is present. The interpreter and
25 L.K.xxx are still under oath. Translate.

1 THE WITNESS: Yes.

2 THE COURT: You may proceed.

3 MR. GUNN: Thank you, Your Honor.

4 Q. L.K.xxx, when we stopped, I was asking you about different
5 things you said about how often you said Michael raped you.

6 Do you remember that?

7 A. Yes.

8 Q. And I asked you what you told the Cambodian police officer
9 about that.

10 Do you remember that?

11 A. Yes.

12 Q. And what I'm wondering now is whether it would help you
13 remember what you told him about that if you saw a copy of a
14 report he wrote. The -- I'm sorry. I didn't mean to interrupt.

15 A report that you also put your fingerprint on. Would
16 that help you remember what you told him?

17 A. Yes.

18 MR. GUNN: Your Honor, could I have an exhibit marked?

19 THE COURT: All right.

20 MR. GUNN: This would be 131, Your Honor.

21 THE COURT: For identification?

22 MR. GUNN: I am providing a copy to counsel. I am
23 providing an English -- one English translation, Your Honor, and
24 the Cambodian original.

25 Q. L.K.xxx, what I would like you to look at -- I'm afraid I

1 can't read the Cambodian, so I'm just estimating based on the
2 English, but I would like you to find a place in that report
3 where you see the words -- find the place in that report where
4 you see the words "in the period of about one week." Can you
5 find that? It's probably about halfway down on the page that
6 has 10078 at the bottom.

7 MR. GUNN: Maybe the interpreter could help her find
8 it, Your Honor.

9 THE COURT: That would be fine.

10 THE INTERPRETER: I'm sorry?

11 MR. GUNN: Help her find the words that says "in the
12 period of about one week."

13 THE INTERPRETER: Yes. The English portion as well.

14 THE COURT: Can you read Cambodian, L.K.xxx?

15 THE WITNESS: I can.

16 THE COURT: Can?

17 THE INTERPRETER: Yes.

18 THE COURT: Then let's have her look at the Cambodian
19 version.

20 THE WITNESS: It's hard to read, Your Honor.

21 THE COURT: Okay. Why don't we ask the interpreter to
22 translate for you. Not translate because you are going to be
23 reading from the Cambodian. So just read the Cambodian, please.

24 THE INTERPRETER: Do you want me to read out loud,
25 Your Honor, or just find the spot?

1 THE COURT: Yes. Because we won't understand you.
2 Just find the spot where Mr. Gunn mentioned.

3 MR. GUNN: I am realizing that was the prior questions
4 that I was attempting to ask, I think. This topic is actually a
5 sentence beginning, "While I was living in this house" near the
6 bottom. It would be the last -- the beginning of the last --
7 it's the second to the last English sentence on Bates
8 Page 10078. If the interpreter could read the Cambodian
9 equivalent.

10 THE INTERPRETER: I apologize. This is very difficult
11 to read.

12 THE COURT: The handwriting is difficult to read?

13 THE INTERPRETER: Yes. It's not clear.

14 THE COURT: Does anybody have any objection to her
15 translating from the English?

16 MR. GUNN: No, Your Honor. If she would translate the
17 sentence beginning with the words, "while I was living in this
18 house."

19 THE INTERPRETER: Yes.

20 THE COURT: Thank you.

21 (Whereupon, the interpreter translates document for the witness)

22 BY MR. GUNN:

23 Q. Actually my question for you first, L.K.xxx, is does
24 hearing that and the statement that you fingerprinted for the
25 Cambodian police officer help you remember what you told him

1 about how many times you claim Michael raped you? Does it help
2 you remember what you told him about that?

3 A. Very little.

4 Q. I'm sorry?

5 THE INTERPRETER: "I can remember little."

6 BY MR. GUNN:

7 Q. But, in fact, you did tell him that the total number of
8 times Michael raped you was about 20 times; right?

9 THE COURT: L.K.xxx, the question is not what the
10 interpreter just read but the question is what you now remember
11 about what you said to the police officer. Do you understand
12 the difference?

13 THE WITNESS: I can remember some.

14 BY MR. GUNN:

15 Q. Of what you told him?

16 A. Yes.

17 Q. And one of the things you told him was that the number of
18 times Michael raped you was about 20; right?

19 A. Right now?

20 Q. I'm asking if you remember now that that's what you told
21 him then.

22 A. Yes.

23 Q. You didn't tell him it was every night; right?

24 A. I did not.

25 Q. And you didn't tell him it was two or three times a week,

1 did you?

2 A. Yes, I did.

3 Q. Well, what you told him is it was about 20 times total;
4 right?

5 A. Yes.

6 Q. You did not tell him it was two or three times a week?

7 A. I did.

8 Q. You told Agent Phillips, when he interviewed you, that the
9 total number of times was, quote, many times more than 20 times,
10 unquote, didn't you?

11 THE INTERPRETER: Can you repeat that last statement,
12 "how many times"?

13 BY MR. GUNN:

14 Q. You told him the total number -- you told Agent Phillips,
15 when he asked you questions, that the total number of times was,
16 quote, many times more than 20 times, unquote; right?

17 A. No.

18 Q. Are you positive about that?

19 A. Yes.

20 Q. And then when Ms. Donahue met with you in Cambodia a few
21 months ago, you told her it happened once, and then a second
22 time a week later, and then two to three weeks after that it
23 started happening every day; right? That's what you told
24 Ms. Donahue?

25 THE INTERPRETER: Can you break down "happened once"?

1 MR. GUNN: Yes.

2 Q. When you met with Ms. Donahue, you told her that after --
3 that it was every day after the first two or three weeks; right?

4 A. What lady? I don't know.

5 Q. This lady who's sitting right here, the prosecutor who
6 asked you questions earlier, Patty.

7 A. Okay. So what did I say?

8 Q. You told her that after the first two times, it started
9 happening every day; correct?

10 A. I would not remember. I don't remember.

11 Q. Would it help you remember if the interpreter read a report
12 they wrote about that meeting?

13 A. Okay.

14 MR. GUNN: Your Honor, can I have an exhibit marked?

15 THE COURT: Yes.

16 MR. GUNN: If we could call this 132, Your Honor.

17 THE COURT: All right.

18 MR. GUNN: If could approach. Extra copy for the
19 Court.

20 (Defendant's Exhibit 132 was marked)

21 THE COURT: Mr. Gunn, would you point out for the
22 interpreter what you want.

23 MR. GUNN: Yes, Your Honor. One moment, Your Honor.

24 It would be, Your Honor, on the page with Bates stamp
25 6745, the last full paragraph. Perhaps the interpreter could

1 just read the whole paragraph.

2 THE INTERPRETER: Yes. The last paragraph, Counsel?

3 MR. GUNN: The last full paragraph. Beginning with
4 the words "approximately one week."

5 (Whereupon, the interpreter read the document to the witness)

6 BY MR. GUNN:

7 Q. Does that help you remember about what you told Patty
8 Donahue about how often it happened?

9 A. Yes.

10 Q. And you told her that after two or three weeks, it happened
11 every day; right?

12 A. Did you ask me if I had said that?

13 Q. Yes.

14 A. Yes.

15 Q. You also were asked questions about how often you were tied
16 up; right?

17 A. Yes.

18 Q. And you told the organization people who interviewed you
19 soon after the arrest that it was every time; right?

20 A. I did not say that.

21 Q. Another thing you said -- strike that.

22 Another thing you were asked questions about or talked
23 about was who decided you should be tied up; right?

24 THE INTERPRETER: Counsel, can you repeat that
25 question, please?

1 MR. GUNN: Yes.

2 Q. Another thing you were asked questions about or talked
3 about was how often or who decided you should be tied up;
4 correct? Your Honor, I will withdraw this question.

5 You were also asked questions about how Michael
6 supposedly made you take some sort of medicine or medication
7 before he raped you; right?

8 MS. DONAHUE: Objection. Vague as to when the
9 questions were asked.

10 THE COURT: Sustained.

11 BY MR. GUNN:

12 Q. In the different interviews, you talked about what you say
13 about Michael giving you medication before he abused you; right?

14 MS. DONAHUE: Objection. Vague.

15 THE COURT: Well, I don't think that's what happened
16 on direct, so I'm not sure -- I don't know what you're trying to
17 do. So far you haven't articulated a question that I'll allow.

18 BY MR. GUNN:

19 Q. You told the organization people who interviewed you soon
20 after the police came to the house that you were -- that you
21 were given medication or medicine every time; right?

22 A. I do not remember.

23 Q. You also made statements -- strike that. Let me step back.

24 Do you remember a man named James Pond at Agape?

25 THE INTERPRETER: I am sorry. James what?

1 MR. GUNN: Pond, like a fish pond, who worked at Agape
2 in Cambodia?

3 THE WITNESS: Yes.

4 BY MR. GUNN:

5 Q. And you made statements to him about Michael; right, or
6 said things to him -- let me rephrase the question.

7 You said things to him about Michael; right?

8 A. No.

9 Q. Well, didn't you tell him that Michael was good to you?

10 A. No.

11 Q. You never told even your own mother about this thing you're
12 saying now about Michael abusing you, did you?

13 Let me withdraw the question and rephrase it,
14 Your Honor.

15 Did you ever tell your mother about what you're saying
16 now about Michael abusing you?

17 A. No.

18 Q. And for the first three months that you were at Michael's
19 house, you saw your mother every day because she was working
20 there, didn't you?

21 A. Sometimes yes. Sometimes she would go back home.

22 Q. But most of the time she was there; right?

23 A. Yes.

24 Q. And you went home with her for the Cambodian new year,
25 didn't you?

1 A. No.

2 Q. When she stopped working there, you told her that you
3 wanted to stay at the house; right?

4 A. Yes.

5 Q. When Agent Phillips interviewed you after Michael was
6 arrested, did you tell him that you didn't like living at
7 Michael's house?

8 A. Yes.

9 Q. Well, that wasn't really true, was it, L.K.xxx?

10 A. The truth.

11 Q. Actually, you were happy at the house, weren't you?

12 A. Sometimes no; sometimes yes.

13 MR. GUNN: Your Honor, could I -- I would like to
14 approach with a set of exhibits, if I could.

15 THE COURT: All right.

16 MR. GUNN: One set of originals, Your Honor, and one
17 set for the Court.

18 THE COURT: Thank you.

19 BY MR. GUNN:

20 Q. L.K.xxx, I would like you to look at Defense Exhibit 320.

21 If the interpreter could help find it for her,
22 Your Honor.

23 THE COURT: Sure.

24 MR. GUNN: If they are face up they are probably if
25 the right order. If the interpreter turns them over face up, I

1 believe that would be easier and I believe 320 would be on top
2 with a sticker on the back.

3 THE INTERPRETER: Yes.

4 BY MR. GUNN:

5 Q. If that could be placed in front of L.K.xxx, Your Honor.

6 Is Defense Exhibit 320 a set of photographs?

7 THE INTERPRETER: What is the question, counsel?

8 BY MR. GUNN:

9 Q. Is exhibit, Defense Exhibit 320, a set of photographs,

10 L.K.xxx?

11 A. Yes.

12 Q. And are they photographs from the birthday party you had?

13 A. Yes.

14 Q. That was just a few days before Michael was arrested;
15 right?

16 A. I don't recall how many times.

17 Q. But it was close?

18 A. Yes.

19 MR. GUNN: And, Your Honor, I would offer Defense
20 Exhibit 320 into evidence.

21 MS. DONAHUE: No objection.

22 THE COURT: Admitted.

23 (Defendant's Exhibit 320 was received)

24 BY MR. GUNN:

25 Q. This is the first photograph in that exhibit; right?

1 A. Yes.

2 Q. And that's your mother presenting you with a birthday cake?

3 A. Yes.

4 Q. And would you turn to the third page, this page.

5 That's you and the others playing around putting cake
6 on each other's faces; right?

7 A. Yes.

8 Q. That's your mother there on the screen where I'm pointing?

9 A. Yes.

10 Q. And that's you next to her; right?

11 A. Yes.

12 Q. Your mom has cake on her face?

13 A. Yes.

14 Q. And you're smiling and laughing; right?

15 A. Yes.

16 Q. And that's S.R.xxx where I'm pointing -- that's S.R.xxx
17 over there playing around putting cake on her mother's face;
18 right?

19 A. S.S.xxx.

20 Q. Okay.

21 Is that S.R.xxx down there with cake on her face?

22 A. Yes.

23 Q. So you were all playing around there having fun; right?

24 A. Yes.

25 Q. And the next page, that's you, too, with a little pointed

1 birthday hat on? Right?

2 A. Yes.

3 Q. And you're smiling there?

4 A. Yes.

5 Q. Because you were happy, right?

6 A. Yes.

7 Q. And the next page is you receiving a present; right?

8 A. Yes.

9 Q. And you're smiling there; right?

10 A. Yes.

11 Q. And then the next pictures are you opening the present and
12 smiling; right?

13 A. Yes.

14 Q. Would you now look at Defense Exhibit 325.

15 THE COURT: Any objection to 325?

16 MS. DONAHUE: No, Your Honor.

17 THE COURT: All right. That will come in.

18 (Defendant's Exhibit 325 was received)

19 BY MR. GUNN:

20 Q. Defense Exhibit 325 is a set of photographs; right?

21 A. Yes.

22 Q. And this is the first page that I have got here on the
23 screen; right?

24 A. Yes.

25 Q. And is that you standing up there with someone with a

1 microphone?

2 A. Yes.

3 Q. And were you getting an award there or what was going on?

4 A. I was receiving an award.

5 Q. And then the other photographs in this set basically sort
6 of go in order showing you getting the award; right?

7 A. Yes.

8 Q. This, by the way, was at your school; right? It was an
9 award for school?

10 A. Yes.

11 Q. Would you now look at Defense Exhibit 330.

12 THE COURT: Any objection to 330?

13 MS. DONAHUE: No, Your Honor.

14 THE COURT: Admitted.

15 (Defendant's Exhibit 330 was received)

16 BY MR. GUNN:

17 Q. Do you have that in front of you L.K.xxx?

18 A. Yes.

19 Q. This is a set of photographs of you performing in a school
20 show; correct?

21 A. Yes.

22 Q. What kind of show was it?

23 A. Model. It was fashion show.

24 Q. This is you with some of the other girls at the school;
25 right?

1 A. Yes.

2 Q. Did a lot of the girls at the school participate in that
3 show?

4 A. Yes.

5 Q. Now I would like you to look at Defense Exhibits 335 and
6 336.

7 THE COURT: Any objection?

8 MS. DONAHUE: No objection, Your Honor.

9 THE COURT: Admitted.

10 (Defendant's Exhibits 335 and 336 were received)

11 BY MR. GUNN:

12 Q. This is the first one of those; right?

13 A. Yes.

14 Q. That's you there in the house with your mother and your
15 little brother David; right?

16 A. Yes.

17 Q. And you were happy there; right?

18 A. Yes.

19 Q. And then this is the other picture, isn't it?

20 A. Yes.

21 Q. Taken right after the other one; right?

22 A. I wouldn't know.

23 Q. But it looks -- it has you and your mom and David again;
24 right?

25 A. Yes.

1 Q. And you were happy there; right?

2 A. Yes.

3 Q. Would you now look at Defense Exhibit 337.

4 THE COURT: Any objection?

5 MS. DONAHUE: No objection.

6 THE COURT: Admitted.

7 (Defendant's Exhibit 337 was received)

8 BY MR. GUNN:

9 Q. That's another picture of you at the house; right?

10 A. Yes.

11 Q. And you're sitting there on the balcony?

12 A. Yes.

13 Q. And you're smiling?

14 A. Yes.

15 Q. And that's because you were happy again?

16 A. I don't know.

17 Q. Would you look at Defense Exhibits -- or the interpreter
18 get, Your Honor, Defense Exhibits 338 and 339.

19 THE COURT: Any objection?

20 MS. DONAHUE: No objection.

21 THE COURT: All right. Those will come in.

22 (Defendant's Exhibits 338 and 339 were received)

23 BY MR. GUNN:

24 Q. Those are two more photographs of you at the house; right?

25 A. Yes.

1 Q. This is the first one showing you having a picture --
2 you're up on the balcony?

3 A. I don't know what -- which photograph.

4 Q. But that's you in the photograph; right? Where I'm
5 pointing my pen?

6 A. Yes.

7 Q. And this is the balcony of the house?

8 A. Yes.

9 Q. And you're smiling here or smiling or laughing here; right?

10 A. Yes.

11 Q. And then the next one is you in the same place and you're
12 waving; right?

13 A. Yes.

14 Q. Would you now look at Defense Exhibits 340 -- if the
15 interpreter, Your Honor, could get 340 and 345?

16 THE COURT: Any objection?

17 MS. DONAHUE: No objection.

18 THE COURT: Those will come in.

19 (Defendant's Exhibits 340 and 345 were received)

20 BY MR. GUNN:

21 Q. The first one, 340, is a set of photographs of people
22 eating at the house; right?

23 A. Yes.

24 Q. And is that you where I'm pointing my pen there?

25 A. Yes.

1 Q. And that's your mother, sort of a little over from you?

2 A. Yes.

3 Q. And are these S.R.xxx and S.S.xxx?

4 A. Yes.

5 Q. And you and everybody else was happy there; right?

6 A. I don't know.

7 Q. Well, there is a series of photographs -- the rest of that
8 exhibit is more photographs of all of you eating there; right?

9 A. Yes.

10 Q. Would you look at Defense Exhibit 350.

11 THE COURT: Any objection?

12 MS. DONAHUE: No objection.

13 THE COURT: That will come in.

14 (Defendant's Exhibit 350 was received)

15 BY MS. DONAHUE:

16 Q. That's a set of pictures of you and the other girls in your
17 school uniforms; right?

18 A. Yes.

19 Q. And you're -- this is the first photograph in that set;
20 right?

21 A. Yes.

22 Q. And is that you there in the front?

23 A. Yes.

24 Q. And who is that behind you?

25 A. S.R.xxx.

1 Q. So you and S.R.xxx are sort of clowning around and playing
2 and enjoying yourselves?

3 A. I don't know what I was doing.

4 Q. Well, you're smiling; right?

5 A. Yes.

6 Q. Or maybe even laughing?

7 A. You mean what laugh?

8 Q. And then the rest -- look at the fourth photograph. This
9 is the fourth photograph in that set, isn't it?

10 A. Yes.

11 Q. And is that you smiling and laughing where I'm pointing my
12 pen on the screen?

13 A. Yes.

14 Q. And this is -- is that Ngoc?

15 A. Ngoc.

16 Q. Will you turn to the next photograph. That's the four of
17 you again playing around?

18 A. Yes.

19 Q. And there is more photographs like that in this set; right?

20 A. Yes.

21 Q. Would you look at Defense Exhibits 360 through 362.

22 THE COURT: Any objection?

23 MS. DONAHUE: No objection.

24 THE COURT: Those are admitted.

25 (Defendant's Exhibits 360 through 362 were received)

1 BY MR. GUNN:

2 Q. This is one of those photographs; right?

3 A. Yes.

4 Q. And that's all of you sitting there laughing or smiling;
5 right?

6 A. Yes.

7 Q. That's you there on the right?

8 A. Yes.

9 Q. And then the other two are similar photographs; right?

10 A. Yes.

11 Q. 362 -- who is -- one girl sticking out her tongue?

12 A. S.R.xxx.

13 MR. GUNN: If the interpreter could put 363,
14 Your Honor.

15 THE COURT: It's in evidence. You can just put it on
16 the screen.

17 MR. GUNN: 363 is?

18 THE COURT: Yes.

19 MR. GUNN: All right.

20 Q. That's you lounging in the hammock at the house; right?

21 A. Yes.

22 Q. You're making a sign with your left hand?

23 A. I don't know.

24 Q. Well, do you know what you're doing with your left hand?

25 A. I don't know. I didn't realize what I was doing.

1 MR. GUNN: If I could have the interpreter,
2 Your Honor, take 365 and 366.

3 MS. DONAHUE: No objection.

4 THE COURT: Those will come in.

5 (Defendant's Exhibits 365 and 366 were received)

6 BY MR. GUNN:

7 Q. These are two more photographs of you down in the patio or
8 yard area with the other girls in your school uniforms, along
9 with your mom and your little brother; right?

10 A. Yes.

11 Q. And this is a more close-up picture of you in the same
12 place?

13 A. Yes. The same.

14 Q. And that's you where I'm pointing my pen; right?

15 A. Yes.

16 Q. And you're smiling there?

17 A. Yes.

18 Q. Finally, would you look at Defense Exhibit 367.

19 MS. DONAHUE: No objection.

20 THE COURT: Admitted.

21 MR. GUNN: Actually I don't know if I provided that
22 one, Your Honor.

23 THE COURT: The one I have is marked 368.

24 MR. GUNN: 367, Your Honor, is for another witness.

25 THE COURT: Okay.

1 MR. GUNN: 368 is also for another witness.

2 THE COURT: Admitted -- oh, that's for another
3 witness?

4 MR. GUNN: Yes.

5 Q. By the way, going back to when you told Agent Phillips that
6 you didn't like living at the house, he asked you -- strike
7 that.

8 He asked you why after you told him that, didn't he?

9 A. Yes.

10 MS. DONAHUE: Objection. Calls for hearsay.

11 THE COURT: Well, not the question.

12 MR. GUNN: Not yet.

13 Q. And what you told him in response to that --

14 MS. DONAHUE: Objection. Calls for hearsay.

15 MR. GUNN: Your Honor, I think it's -- it's
16 significant not for -- it has relevance circumstantially, aside
17 from any hearsay issue. I -- I mean, you have to hear, I guess,
18 what it is.

19 May I ask the question, Your Honor?

20 THE COURT: No.

21 (Sidebar conference commenced)

22 MR. GUNN: Your Honor, what I intend to ask and what I
23 then intend to ask -- ask her if she recognizes in the videotape
24 and play that part of the videotape is that when the agent asked
25 her why she didn't like living at the house, what she said was,

1 quote, it's quiet and I miss my home, unquote. She didn't say,
2 "Because I was being raped," and she gave rape as a reason only
3 after he suggested it.

4 I think two reasons that's admissible, Your Honor.
5 First of all, even if it were offered for the truth, I think
6 it's arguably under the state of mind exception because it's
7 talking about her state of mind.

8 Second, I think it has circumstantial relevance. It's
9 basically comparable to a lack of protest type of thing where
10 she is saying -- if someone --

11 THE COURT: The relevance isn't the issue so
12 circumstantial relevance does not get hearsay in. It's not
13 hearsay. I will allow it.

14 MR. GUNN: Your Honor, related to that, this would be
15 a place where I would like to play the videotape for the jury so
16 they can see exactly the exchange. I will ask her if she would
17 recognize it and have her identify it and then play it for the
18 jury.

19 THE COURT: It's admissible. He can play the
20 videotape.

21 MS. DONAHUE: Okay. Doesn't he have to ask her first
22 if she said yes and if she says yes, the videotape is still m--

23 THE COURT: No. Because I'm finding it's not hearsay.

24 (Sidebar conference ended)

25 MR. GUNN: I'm sorry, Your Honor. I was trying to

1 help Mr. Brown find something.

2 Q. Anyway, I think I just asked you, L.K.xxx, about you
3 remember Agent Phillips during that interview asking you why you
4 didn't like living at the house; correct?

5 A. Yes.

6 Q. And the first thing you said in response to that was,
7 quote, it's quiet and I miss my home, unquote; right?

8 A. I don't remember.

9 MR GUNN: Does Your Honor want me to refresh memory
10 first or --

11 THE COURT: Ms. Donahue?

12 MS. DONAHUE: I think, yes.

13 THE COURT: All right. Yes?

14 You can't mumble out there.

15 MS. DONAHUE: I apologize. Yes, Your Honor.

16 MR. GUNN: Let me ask one more question first,
17 Your Honor, and then we can refresh memory as to both, probably.

18 Q. You only gave being raped as a reason to Agent Phillips
19 after he suggested that as a reason; isn't that true?

20 THE INTERPRETER: Can you repeat the question?

21 BY MR. GUNN:

22 Q. You only gave rape as a reason for not liking the house
23 after Agent Phillips suggested that; isn't that true, L.K.xxx?

24 A. Not true.

25 Q. Well, would it refresh your memory about the exchange with

1 Agent Phillips and what you said first and what you said next
2 and when if you were able to listen to the videotape with those
3 headphones again?

4 A. Okay.

5 MR. GUNN: Your Honor, if I could -- if we are going
6 to do it with the headphones first, I guess perhaps the agent
7 can help with that. If we could play -- it would be the second
8 section, what I call CD 2, of minute 58, second 40 to minute 59,
9 second 32.

10 AGENT WANG: One more time, the time marker?

11 MR. GUNN: Minute 58, second 40.

12 AGENT WANG: And stop?

13 MR. GUNN: Stop at 59:32.

14 (Whereupon, the CD was played for the witness)

15 BY MR. GUNN:

16 Q. Does that help you remember what the first thing you said
17 to Agent Phillips was when he asked why you didn't like living
18 at the house?

19 A. Yes.

20 Q. And what you said was, "It's quiet and I miss my home";
21 isn't that right?

22 A. Yes.

23 Q. And you only gave being raped as a reason when he asked
24 you, "But did you like it there because you were getting raped
25 or because you missed home"; right?

1 THE INTERPRETER: Can you ask the question again,
2 please?

3 MR. GUNN: Actually, if I could, I would just play the
4 videotape at this point.

5 THE COURT: It would be easier. You did not state the
6 question properly.

7 MR. GUNN: If I could just play, Your Honor, the
8 videotape and if we could have the CD I have identified as
9 Defense Exhibit 132 and we will play that same portion, the
10 second CD or second tape, from minute 58, second 40 through
11 minute 59:32.

12 THE COURT: All right.

13 MR. GUNN: If I can switch to our computer. If
14 Mr. Brown can first blow up the photo. And I believe our sound
15 is tied in, Your Honor.

16 (Whereupon, the video was played for the jury)

17 MR. GUNN: I believe that's where we stopped.
18 Actually, Your Honor, that should be Defense Exhibit 133. I
19 think 132 was already used.

20 THE COURT: All right.

21 MR. GUNN: And I have no further questions.

22 THE COURT: Redirect?

23 MS. DONAHUE: Your Honor, I do have a couple questions
24 on redirect.

25 THE COURT: Okay.

1 MS. DONAHUE: Could I ask if she needs to take a
2 break?

3 THE WITNESS: No.

4 MS. DONAHUE: Okay. Thank you.

5 REDIRECT EXAMINATION

6 BY MS. DONAHUE:

7 Q. I would ask first if Government's Exhibit 1019 could be
8 placed before the witness.

9 L.K.xxx, what is that a picture of?

10 A. That's Michael and me.

11 Q. Is that in Michael's bedroom?

12 A. Yes.

13 MS. DONAHUE: I move 1019 into evidence.

14 THE COURT: Paul, would you turn off the screen.

15 Admitted.

16 (Government's Exhibit 1019 was received)

17 BY MS. DONAHUE:

18 Q. L.K.xxx, part of this picture is blocked out, but are you
19 wearing any clothes in this picture?

20 A. No.

21 Q. Is Michael wearing any clothes in this picture?

22 A. No.

23 Q. Can you take a look at Michael's leg just for a moment. Do
24 you see that mark on his leg?

25 A. It's not clear.

1 Q. Can you take one more look for me and then we will put the
2 picture away.

3 MR. GUNN: Objection, Your Honor. Asked and answered.

4 THE COURT: Overruled.

5 THE WITNESS: I see it right around there, but I'm not
6 really clear.

7 BY MS. DONAHUE:

8 Q. When you say "right around there," do you mean by his
9 penis?

10 A. Yes.

11 Q. Was that the only picture that Michael took of you naked?

12 A. Many more.

13 Q. Where did he take those pictures?

14 A. In his bedroom.

15 Q. What was he wearing when he took the pictures of you?

16 A. He did not wear clothes.

17 Q. I would like to ask you a couple of questions. If I could
18 have Government's Exhibit 1096.

19 Can you tell me what that is a picture of?

20 A. That's his bed.

21 Q. When you say "his," do you mean Michael's?

22 A. Yes.

23 Q. When Michael had you and the other girls suck on his penis,
24 where would he do that?

25 A. On that bed.

1 Q. Does Michael's bedroom have curtains on the window?

2 A. Yes.

3 Q. I would like you to take a look at another photograph,
4 Government's Exhibit 1113.

5 Does that show the massage table?

6 A. Yes.

7 Q. Did you and the other girls give Michael massages when he
8 laid down on that table?

9 A. Yes.

10 Q. When Michael was lying down on that table, would you ever
11 touch him sexually?

12 A. No.

13 Q. If you look at that picture, are there curtains on the
14 windows to that room?

15 A. No.

16 Q. Okay.

17 L.K.xxx, you were at Michael's house for a little over
18 six months; is that right?

19 A. No.

20 Q. Was it longer than six months?

21 A. No.

22 Q. Were you there at Christmastime?

23 A. Yes.

24 Q. And were you there at your birthday party the following
25 June?

1 A. Yes.

2 Q. Do you remember about how long your mom lived at Michael's
3 house?

4 A. Maybe around three months.

5 Q. Did you tell Gary Phillips when he interviewed you in June
6 that Michael had started raping you about three months earlier?

7 MR. GUNN: Objection. Hearsay, Your Honor.

8 THE COURT: Overruled.

9 THE INTERPRETER: I'm sorry, counsel. Can you repeat
10 that last statement?

11 MS. DONAHUE: Sure.

12 Q. In June when Gary Phillips talked to you, did you tell him
13 the first time Michael raped you was about three months earlier?

14 A. Yes.

15 Q. L.K.xxx, I would like you to take a look at another
16 photograph. It's on the big screen. 2093 for identification,
17 Your Honor.

18 Can you take a look at that big screen just for a
19 minute.

20 Do you know what that is a picture of?

21 A. That's -- that's in front of my grandmother's home.

22 Q. Who lives at your grandmother's home?

23 A. My mother.

24 Q. Who else lives at your grandmother's home?

25 A. My father, my little brother, my aunt maybe. I don't know.

1 Q. When you lived at Michael's house for part of the time
2 Michael gave your mother a job; is that right?

3 A. Yes.

4 Q. And even after your mom left the house, would she come back
5 to visit?

6 THE INTERPRETER: I am sorry, what was the last one?

7 BY MS. DONAHUE:

8 Q. After your mom left Michael's house, would she come back to
9 visit?

10 A. Just on my birthday.

11 Q. Was your mom happy on your birthday?

12 A. Yes.

13 MS. DONAHUE: I don't have any more questions.

14 THE COURT: Recross?

15 MR. GUNN: No, Your Honor.

16 MS. DONAHUE: I move 2093 into evidence.

17 THE COURT: Any objection?

18 MR. GUNN: No objection.

19 THE COURT: That will come in.

20 (Government's Exhibit 2093 was received)

21 THE COURT: Thank you L.K.xxx. You're finished now.

22 Ladies and gentlemen, don't talk about the case or
23 form or express any opinions about the case until it's finally
24 submitted to you. We will take a 15 minute break.

25 (Recess taken)

(Jury In)

THE COURT: I see the Government has another witness.

MS. DONAHUE: Yes, we do, Your Honor. Her name is
NTDx.

THE COURT: Let's first swear in the Vietnamese
interpreter.

Ann Spiratos, Vietnamese Interpreter, was Sworn

THE COURT: Now would you swear in the witness.

NTDx, Government's witness, was Sworn

THE CLERK: Thank you. Please be seated. Please
state and spell your first name for the record.

THE INTERPRETER: The interpreter's name?

THE COURT: No. Actually we should have gotten your
name as well. Would you state your name?

THE INTERPRETER: Yes, Your Honor. Ann Spiratos,
S-P-I-R-A-T-O-S.

THE COURT: And the witness's first name, please.

THE WITNESS: My name is NTDx.

THE COURT: Interpreter spelling, please.

THE INTERPRETER: N-T-D-x.

THE COURT: Thank you. You may proceed.

MS. DONAHUE: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. DONAHUE:

Q. Good afternoon, NTDx. Can you tell us how old you are?

1 A. I am 14.

2 Q. What country are you from?

3 A. I'm from Cambodia.

4 Q. Does your family live in Cambodia?

5 A. Yes.

6 Q. I would like you to take a look at a picture. This is
7 Government's Exhibit 1159.

8 NTDx, do you know what that is a picture of?

9 A. This is my house.

10 Q. Is this your house in Cambodia?

11 A. Yes.

12 MS. DONAHUE: Move 1159 into evidence.

13 THE COURT: Admitted.

14 (Government's Exhibit 1159 was received)

15 BY MS. DONAHUE:

16 Q. NTDx, can you tell us who is in your family?

17 A. My older brother, my mom, my dad, my maternal grandfather,
18 my sister-in-law, my aunt, my niece and nephew -- and my younger
19 sibling.

20 Q. Do all of them live in the house that is in this picture?

21 A. Yes.

22 Q. Does your mom have a job?

23 A. Yes.

24 Q. What is her job?

25 A. She is selling fruits.

1 Q. Where does she sell fruits?

2 A. At the market.

3 Q. Now, in Cambodia, do you live in this house -- the house
4 that is in the picture?

5 A. Yes.

6 Q. Right now when you are in -- that's a bad question.

7 Do you live every day with your family in this house?

8 A. Yes.

9 THE COURT: You may lead, Ms. Donahue.

10 MS. DONAHUE: Okay.

11 Q. You also live at a center called Hagar; is that right?

12 A. Yes.

13 Q. And you stay at Hagar; is that right?

14 A. Yes.

15 Q. And can you tell us what -- a little bit about the center
16 where you live?

17 A. I don't understand.

18 Q. Okay.

19 Do you go to school at Hagar?

20 A. Yes.

21 Q. What grade are you in?

22 A. 4th grade.

23 Q. And what do you study in 4th grade?

24 A. I study Cambodian language, English, and computer.

25 Computer.

1 Q. Do you also study dancing and working with beads?

2 A. Yes.

3 Q. And do you like to make jewelry?

4 A. Yes, I do.

5 Q. What is one of your favorite things to do for fun?

6 A. I like to play with -- I like to do jump -- I like to play
7 with jump rope.

8 Q. Are you a little bit nervous?

9 A. No.

10 Q. Okay. That's good.

11 If you don't understand a question, please tell me.

12 A. Yes.

13 Q. I would like you to take a look at another picture,
14 Government's Exhibit 1077.

15 THE COURT: It's on the screen.

16 BY MS. DONAHUE:

17 Q. Why don't you take a look up there at the screen.

18 Do you know what that is a picture of?

19 A. A house.

20 Q. Do you know whose house that is?

21 A. Michael.

22 Q. Have you ever been to that house before?

23 A. Yes.

24 Q. Did you stay at that house for a little while?

25 A. Yes.

1 Q. And do you remember about how long did you stay at that
2 house?

3 A. One week.

4 Q. Do you remember what time of the year it was when you
5 stayed at that house?

6 A. I know that it was in 2005. I don't remember the month.
7 But I know it was around Vietnamese new year.

8 Q. It was around the Vietnamese new year?

9 A. Yes.

10 Q. And you think it was in 2005?

11 A. Yes.

12 Q. I would like you to take a look at another photograph.
13 It's Government's Exhibit 1332.

14 A. Yes.

15 Q. What is that a picture of?

16 A. This is my picture and Tai Linh.

17 Q. Who took this picture?

18 A. Michael.

19 MS. DONAHUE: Move 1332 into evidence.

20 THE COURT: Admitted.

21 (Government's Exhibit 1332 was received)

22 BY MS. DONAHUE:

23 Q. You said -- is that you in the flowered outfit on the
24 couch?

25 A. Yes.

1 Q. Who is the other girl?

2 A. Tai Linh.

3 Q. Can you spell that?

4 THE INTERPRETER: Interpreter spelling. T-A-I.

5 Second word L-I-N-H.

6 THE COURT: Thank you.

7 BY MS. DONAHUE:

8 Q. NTDx, what are you and Tai Linh doing in that picture?

9 A. Watching TV.

10 Q. And was this in Michael's house?

11 A. Yes.

12 Q. Is this picture downstairs or upstairs at Michael's house?

13 A. Downstairs.

14 Q. When you were at Michael's house, did you go upstairs?

15 A. Yes.

16 Q. What room upstairs did you go into?

17 A. I don't understand.

18 Q. Did you go into a bedroom upstairs?

19 A. Yes.

20 Q. If you take a look at another photograph, which is

21 Exhibit 1096. What is that a picture of?

22 A. This is the bed of Michael.

23 Q. And were you ever on that bed?

24 A. Yes.

25 Q. Did something happen to you on that bed?

1 A. Yes.

2 Q. Can you tell us what happened to you on the bed that's in
3 that picture?

4 A. On this bed Michael harmed me.

5 Q. When you say Michael harmed you, what did he do to harm
6 you?

7 A. He used rope to tie my hands and my legs. He used tape to
8 cover my mouth. He hit me. He used a pillow and push on my
9 face. And then he take his penis, put it inside my vagina.

10 Q. You said he used ropes to tie you. What -- can you tell us
11 what did he do with the ropes? Where did he put them?

12 A. Well, with this arm, this hand, he tied it down with this
13 leg, and the other hand, he tied the other hand with the other
14 leg.

15 Q. So he tied your right hand to your right leg and your left
16 hand to your left leg; is that right?

17 A. Yes.

18 Q. Did you make any noise when he did this?

19 A. Yes.

20 Q. What noise did you make?

21 A. I struggled and then I screamed.

22 Q. What happened when you screamed?

23 A. When I screamed, Michael hit me.

24 Q. What did he hit you with?

25 A. His hand.

1 Q. Was his hand open or closed?

2 A. Open.

3 Q. Where did he hit you?

4 A. On my face.

5 Q. Did he hit you on your face more than one time?

6 A. Yes.

7 Q. Did he put anything on your face?

8 A. No.

9 Q. Did he use tape at all?

10 A. Yes.

11 Q. What did he do with the tape?

12 A. Cover my mouth.

13 Q. Did he put anything else over your face?

14 A. No.

15 MS. DONAHUE: I would ask for Government's

16 Exhibit 1104, which is physical evidence, a bag.

17 Q. If you could just take a look in that bag, does anything in
18 there look familiar?

19 A. Tape.

20 Q. How come that looks familiar?

21 A. Because Michael used tape to cover my mouth.

22 Q. If you look in that bag, there is some rope in there. Does
23 that look like the rope that he used?

24 A. No.

25 Q. You can put the bag away now.

1 After he put the tape on your mouth, what did he do?

2 A. Then he took his penis and put inside my vagina.

3 Q. Did anything come out of his penis?

4 A. A white fluid.

5 Q. What happened after the white fluid came out of his penis?

6 A. Then he removed the tape and the ropes.

7 Q. Did he take them off you?

8 A. Yes.

9 Q. How did you feel?

10 A. I felt pain.

11 Q. What happened next?

12 A. Then I went inside to the bathroom to clean up, to take a
13 shower.

14 Q. If you could take a look at a photograph, Government's
15 Exhibit 1106. What is that a picture of?

16 A. This picture is Michael's bathroom.

17 Q. If you could also take a look at 1107, Government's
18 Exhibit 1107. Do you know what is in that picture?

19 A. Bathroom.

20 Q. Do you recognize that bathroom?

21 A. Yes.

22 Q. What bathroom is that?

23 A. This bathroom is upstairs inside Michael's room.

24 Q. When you went into that bathroom, did you take a shower?

25 A. Yes.

1 Q. What happened after you took the shower?

2 A. After I took the -- a shower, then I put clothes on.

3 Q. What clothes did you put on?

4 A. A set of clothes. It's flowers -- flowery.

5 Q. Were those your clothes that you had brought with you?

6 A. No.

7 Q. Where did you get the clothes that you put on?

8 A. Michael gave me.

9 Q. Was anybody else in the room when Michael put his penis
10 into your vagina?

11 A. Yes.

12 Q. Who else was in the room?

13 A. Tai Linh.

14 Q. Is Tai Linh the other girl --

15 A. Yes.

16 Q. -- who is on the couch with you in that photograph?

17 A. Yes.

18 Q. That's Government's Exhibit 1332.

19 Was anybody else in the room with you besides Tai Linh
20 when Michael did this to you?

21 A. No.

22 Q. Was anybody else in the house when Michael did this to you?

23 A. No.

24 Q. During the time that you were in Michael's house, were
25 there any girls there besides you and Tai Linh?

1 A. No.

2 Q. And what happened after you put your clothes on?

3 A. After I put clothes on, I went downstairs to lie down on
4 the couch.

5 Q. Did you try to leave the house?

6 A. Yes.

7 Q. What did you do?

8 A. I went outside, look for a place to run out, but I couldn't
9 find a way to go out.

10 Q. Had you ever been at that house before?

11 A. No.

12 Q. Who brought you to the house?

13 A. Ms. Kia.

14 Q. Was this the only time that Michael put his penis inside
15 your vagina when you were at the house?

16 A. Yes.

17 Q. So he did -- did he do it more than one time?

18 MR. BROWN: Objection, Your Honor. Leading. Asked
19 and answered.

20 THE COURT: Overruled.

21 THE WITNESS: Yes.

22 BY MS. DONAHUE:

23 Q. Did you count how many times he put his penis inside your
24 vagina?

25 A. Would you ask the question again, please?

1 Q. Okay. I'll try a little bit different question.

2 Do you remember about how many times he put his penis
3 into your vagina?

4 A. Yes.

5 Q. About how many times did he do that?

6 A. I don't know how many times. I know it was many times.

7 Q. Were you there for a week?

8 A. Yes.

9 Q. And during the time that you were at the house, did Michael
10 ever have you lick his penis?

11 A. No.

12 Q. Did anybody else come over to the house, to Michael's
13 house, during the week that you were there?

14 A. No.

15 Q. Who prepared food, or did someone prepare food when you
16 were there?

17 A. There was nobody, but there was a driver who went out and
18 buy food for him and he brought it over for me to eat.

19 Q. You said earlier that Ms. Kia brought you to Michael's
20 house; is that right?

21 A. Yes.

22 Q. Could you take a look at Government's -- a photograph,
23 Government's Exhibit 2067.

24 Do you know the lady in that picture?

25 A. Yes.

1 Q. Who is that lady?

2 A. Ms. Kia.

3 Q. How did Ms. Kia come to bring you to Michael's house?

4 A. Ms. Kia came to my house and took me.

5 Q. How did she take you?

6 A. She took me on a Honda and we sat on a Honda to go straight
7 to the house.

8 Q. And what did you think was going to happen at Michael's
9 house?

10 A. I did not think about anything.

11 Q. Now, when you were at Michael's house, did he give you any
12 money?

13 A. He did not hand the money to me, but he gave the money to
14 Kia.

15 Q. Did you see him hand money to Kia?

16 A. Yes.

17 Q. Do you know what Kia did with that money?

18 A. No.

19 Q. Do you know how much money Michael handed to Kia?

20 A. I don't know.

21 Q. Now, when you were at Michael's house back then, did you
22 know L.K.xxx?

23 A. No.

24 Q. And right.

25 Now do you stay at the same center where L.K.xxx

1 stays?

2 A. I don't understand.

3 Q. In Phnom Penh, does L.K.xxx stay at Hagar with you?

4 A. No.

5 Q. Does S.R.xxx stay at Hagar with you?

6 A. No.

7 Q. Does S.S.xxx stay at Hagar with you?

8 A. No.

9 Q. Does T.C.xx stay at Hagar with you?

10 A. No.

11 Q. Does K.S.x stay at Hagar with you?

12 A. No.

13 Q. Does I.T. stay at Hagar with you?

14 A. Yes.

15 Q. Going back to when you were at Michael's house --

16 A. Yes.

17 Q. -- was I.T. there at the same time that you were?

18 A. No.

19 Q. Was T.C.xx there at the same time that you were?

20 A. No.

21 Q. Were S.S.xxx and S.R.xxx there at the same time that you
22 were there?

23 A. No.

24 Q. You -- did you try to leave Michael's house after he put
25 his penis into your vagina the second time?

1 A. Yes.

2 Q. What did you do?

3 A. I went out of the gate. I tried to look for a place to run
4 out, but I couldn't find any way.

5 Q. Every time that Michael put his penis inside of your
6 vagina, did he also hit you?

7 A. He hit me the first time.

8 Q. And after that, did he hit you?

9 A. No.

10 Q. Okay. After the first time, did you scream?

11 A. No.

12 Q. After the first time -- bad question. Sorry.

13 The second time, did he tie you up?

14 A. No.

15 Q. After the second time, did he tie you up again?

16 A. No.

17 Q. After the first time, did you struggle?

18 A. No.

19 Q. Now, other than the clothes that he handed you after the
20 first time, did Michael give you any presents?

21 A. No.

22 Q. NTDx, can you look around the courtroom and tell us if you
23 see Michael?

24 A. Yes.

25 Q. Can you tell us where he is?

1 A. (No response.)

2 Q. Over here at this table, is he the man who is sitting
3 closest to me, in the middle, or farthest away from me at this
4 table?

5 A. The one that sit close to me.

6 THE COURT: Indicating the defendant, Mr. Pepe.

7 BY MS. DONAHUE:

8 Q. Now, NTDx, when you were at Michael's house, did any man,
9 other than Michael, put his penis into your vagina?

10 A. No.

11 Q. When you were at Michael's house, did any man, other than
12 Michael, hurt you?

13 A. Could you ask again, please?

14 Q. Sure. When you were at Michael's house, did any man
15 besides Michael hurt you?

16 A. Yes.

17 Q. Who was that?

18 A. I don't know.

19 Q. When you were at Michael's house --

20 A. Yes.

21 Q. -- who else was there?

22 A. There was nobody.

23 Q. Michael was there?

24 A. Yes.

25 Q. And you were there?

1 A. Yes.

2 Q. And Tai Linh, the other girl in the picture was there; is
3 that right?

4 A. Yes.

5 Q. And a driver brought food to the house; is that right?

6 A. Yes.

7 Q. Was -- did anybody else come to the house during the week
8 that you were there?

9 A. No.

10 Q. Okay.

11 Did the driver who came to the house hurt you?

12 A. No.

13 Q. So besides Michael, not Michael, did anybody else hurt you
14 when you were at Michael's house?

15 A. No.

16 MS. DONAHUE: I don't have any more questions.

17 THE COURT: Cross-examination?

18 CROSS-EXAMINATION

19 BY MR. BROWN:

20 Q. Good afternoon, NTDx. When the prosecutor just asked you
21 if someone else hurt you at Michael's house, you answered yes.
22 Do you remember that just now?

23 A. Inside Michael's house, right?

24 Q. Yes.

25 A. I could not hear the question clearly back then.

1 Q. Okay.

2 Do you know a man by the name of Mr. Oh?

3 A. Yes.

4 Q. Who is Mr. Oh?

5 A. Mr. Oh is an American.

6 Q. And please excuse me for asking these personal questions,
7 but isn't it true that you had sex with Mr. Oh?

8 MS. DONAHUE: Objection, 403, 412.

9 THE COURT: Sidebar.

10 (Sidebar conference commenced)

11 THE COURT: Tell me about Mr. Oh.

12 MR. BROWN: Your Honor, the witness, when she was
13 interviewed by the agents, admitted to being abused by a person
14 by the name of Mr. Oh prior to going to Michael Pepe's house. I
15 think it's relevant especially with respect to Dr. Watson's
16 testimony in terms of possible explanation for the missing hymen
17 that Dr. Watson testified about with respect to this witness.

18 MS. DONAHUE: Rule 412 requires pretrial notice. The
19 federal rape shield statute.

20 MR. BROWN: I think that's voluntary refreshing,
21 Your Honor. I don't --

22 THE COURT: What's voluntary? Offer to prove any
23 alleged victim engaged in any sexual behavior?

24 MR. GUNN: I think that's voluntary.

25 THE COURT: It doesn't say voluntary sexual behavior.

1 MR. GUNN: I think it's aimed at intruding on victim's
2 private sexual conduct, not other abuse.

3 MR. BROWN: I think it goes to the source of --

4 THE COURT: No.

5 (Whereupon, the Judge reads the statute)

6 THE COURT: Well, I will allow this single question of
7 whether anyone else had inserted a penis into a vagina, if that
8 is all you are trying to establish.

9 (Sidebar conference ended)

10 BY MR. BROWN:

11 Q. NTDx, has anyone -- has anyone else put a penis in your
12 vagina?

13 A. Yes.

14 Q. I would just like to ask you a few questions about your
15 background.

16 A. Yes.

17 Q. You live in Cambodia?

18 A. Yes.

19 Q. But your family is Vietnamese; is that true?

20 A. Yes.

21 Q. So the language that you speak that you're most comfortable
22 with is Vietnamese?

23 A. Yes.

24 Q. Do you -- are you fluent in Khmer?

25 A. Yes.

- 1 Q. How long have you lived at the Hagar Center?
- 2 A. Two years.
- 3 Q. What's it like there?
- 4 A. I don't understand.
- 5 Q. Is it a nice place to be?
- 6 A. Yes.
- 7 Q. You have lots of -- you have lots of friends there?
- 8 A. Yes.
- 9 Q. And you go to school there; right?
- 10 A. Yes.
- 11 Q. Do you have a lot of free time also to play?
- 12 A. Yes.
- 13 Q. What else do you like about Hagar?
- 14 A. Could you ask me again?
- 15 Q. Are there other things about Hagar that you like?
- 16 A. Yes.
- 17 Q. Could you tell us, please, if you don't mind?
- 18 A. I like to make jewelry.
- 19 Q. Do you get to see your family?
- 20 A. Yes.
- 21 Q. How often do you see your family?
- 22 A. Sometimes once a month. The other time every two weeks.
- 23 Q. Do you want to go back to your family?
- 24 A. No.
- 25 Q. You'd rather stay at Hagar?

1 A. Yes.

2 Q. Why?

3 A. I like to go to school.

4 Q. And when you're with your family, you don't get to go to
5 school; right?

6 A. Right.

7 THE INTERPRETER: I'm sorry. Interpreter correction.
8 "Yes."

9 BY MR. BROWN:

10 Q. How long have you been in the United States?

11 A. Three weeks.

12 Q. And where do you stay here in the United States?

13 A. I don't know.

14 Q. Have you met with the lady -- the woman here next to me,
15 have you had a chance to speak with her before today?

16 A. Yes.

17 Q. How many times have you seen her before today?

18 A. I don't know how many times but I know it's a few.

19 Q. And how long did you meet with her?

20 A. Are you asking me about a time?

21 Q. Yes.

22 A. It's around half an hour, an hour.

23 Q. And it's -- did she tell you the questions that she was
24 going to ask you today in court?

25 A. No.

1 Q. Have you -- did you have -- did the people at Hagar help
2 you prepare for coming to court?

3 A. Yes.

4 Q. Did they have courtrooms or pretend to ask you questions?

5 A. Yes.

6 Q. Did they tell you how to answer those questions?

7 A. No.

8 Q. You said that I.T. is also at Hagar?

9 A. Yes.

10 Q. Are you friends with I.T.?

11 A. Yes.

12 Q. How often do you see I.T.?

13 A. I don't understand.

14 Q. Do you play with I.T. every day?

15 A. Yes.

16 Q. Do you talk to her every day?

17 A. Yes.

18 Q. I.T. speaks Vietnamese also; right?

19 A. Yes.

20 Q. Do you talk to her in Vietnamese?

21 A. Yes.

22 Q. Have you seen I.T. since you have been in the
23 United States?

24 A. Yes.

25 Q. Was I.T. sitting in on the meetings that you had with the

1 lady sitting here next to me?

2 A. No.

3 Q. Was I.T. at the practice court when you were practicing?
4 Was I.T. there?

5 A. Would you ask me again?

6 Q. Was I.T. there when you had practice court?

7 THE COURT: Why don't you rephrase that? I don't know
8 what practice court means, sir.

9 BY MR. BROWN:

10 Q. Remember, you just said that the people from Hagar had --
11 strike that.

12 Do you remember when you said that the people from
13 Hagar had meetings with you to tell you what it was going to be
14 like in court? Do you remember that? We just talked about it.

15 A. Yes.

16 Q. At those -- at those meetings, did they have you sit on a
17 witness chair like you're sitting now?

18 A. Yes.

19 Q. And they had people pretend to ask you questions; right?

20 A. Yes.

21 Q. Did they tell you that Michael Pepe was going to have a
22 lawyer who was going to ask you questions about what happened?

23 A. No.

24 Q. When you had these -- when you had these meetings, was I.T.
25 there?

1 A. No.

2 Q. You said that you know a lady named Kia?

3 A. Yes.

4 Q. And Kia is also known as Basang; right?

5 A. I don't know.

6 Q. How did you meet Kia?

7 A. She told me her name.

8 Q. Where were you when you met her?

9 A. I was at home.

10 Q. You weren't at a market?

11 A. I was at home and then I went to the market and saw her.

12 Q. She came to your house the first time?

13 A. Yes.

14 Q. Did she talk to your mother?

15 A. Yes.

16 Q. Do you remember being questioned by the gentleman standing
17 there to your right sometime last year? His name is Gary.

18 A. Yes.

19 Q. Okay.

20 And before that, do you remember being interviewed by
21 another person who spoke Vietnamese?

22 A. Yes.

23 Q. When you met with those two people, you were trying to tell
24 them what you say happened to you; right?

25 A. Yes.

1 Q. Okay.

2 You never mentioned to them that a person named Tai
3 Linh was there the week that you say you were at Michael Pepe's
4 house; right?

5 THE INTERPRETER: Counsel, could you repeat the
6 question, please?

7 BY MR. BROWN:

8 Q. You never told Gary or the other man that Tai Linh was at
9 the house, did you?

10 A. No.

11 Q. So why didn't you say that Tai Linh was there?

12 A. I said that to the Vietnamese person.

13 Q. You're certain you told that to the Vietnamese man?

14 A. Yes.

15 MR. BROWN: Your Honor, I have no further questions.

16 THE COURT: Redirect?

17 REDIRECT EXAMINATION

18 BY MS. DONAHUE:

19 Q. NTDx, I would like to show you another picture. It's
20 Government's Exhibit 1129.

21 What is that a picture of?

22 A. This -- this one is the picture of the area downstairs in
23 Michael's house.

24 Q. And do you see the TV in that picture?

25 A. Yes.

1 Q. Is that the TV that you were watching?

2 A. Yes.

3 Q. When you were at Michael's house, did you go into any other
4 rooms besides Michael's bedroom and this room with the TV?

5 A. I went one time.

6 Q. Where did you go?

7 A. I went to this room.

8 Q. When you say one time, do you mean that you were at
9 Michael's house just that one week?

10 A. Are you asking me about Michael's room or the other room?

11 Q. I'll ask a different -- I'll ask a different question.
12 That's okay.

13 When you were at Michael's house, where did you sleep?

14 A. Downstairs.

15 Q. Where downstairs?

16 A. Downstairs by the TV area.

17 Q. Did you sleep in a bed?

18 A. I slept on a couch.

19 Q. Why did you sleep on the couch?

20 A. Because I did not want to go inside a bedroom.

21 Q. Why not?

22 A. Just because I did not want to go inside a room.

23 Q. How did you feel when you were at Michael's house?

24 A. I felt I could not -- I just can't say it. I don't know
25 how to say it.

1 Q. That's okay.

2 Kia brought you from your house to Michael's house; is
3 that right?

4 A. Yes.

5 Q. Did -- and Kia talked to your mom before she brought you to
6 Michael's house; is that right?

7 A. Yes.

8 Q. Do you know what Kia and your mom talked about?

9 A. No. I do not know.

10 Q. When you went to Michael's house with Kia, did you know how
11 long you were going to stay there?

12 A. Will you ask again, please?

13 Q. Sure.

14 Did you know how long you were going to stay at
15 Michael's house?

16 A. Yes.

17 Q. How long?

18 A. One week.

19 Q. Who told you that you were going to stay one week?

20 A. Ms. Kia.

21 Q. What happened at the end of the week?

22 A. After a week, I went home.

23 Q. How did you go home?

24 A. Ms. Kia took me.

25 Q. Ms. Kia picked you up at Michael's house and brought you

1 home; is that right?

2 A. Yes.

3 MS. DONAHUE: I have no more questions.

4 THE COURT: Any recross?

5 MR. GUNN: No further questions, Your Honor.

6 THE COURT: Thank you. You're finished.

7 Does the Government have another witness?

8 MS. DONAHUE: Yes, we do, Your Honor.

9 THE COURT: The name of the witness, Ms. Donahue?

10 MS. DONAHUE: Yes, Your Honor. The Government calls

11 I.T..

12 THE COURT: Thank you.

13 THE CLERK: We will be using the same interpreter?

14 THE INTERPRETER: Yes.

15 MS. DONAHUE: Yes.

16 I.T., Government's witness, was sworn

17 THE CLERK: Please have a seat.

18 I will need you to state and spell your first name for
19 the record.

20 THE WITNESS: My name is I.T..

21 THE COURT: Interpreter spelling.

22 THE INTERPRETER: I-T-x.

23 THE COURT: Thank you. You may proceed.

24 DIRECT EXAMINATION

25 BY MS. DONAHUE:

1 Q. Good afternoon, I.T.. how are you?

2 A. I'm good.

3 Q. Can you tell us how old you are?

4 A. I'm 13.

5 Q. What country do you live in, I.T.?

6 A. I live in Cambodia.

7 Q. Have you lived in Cambodia your whole life?

8 A. Yes.

9 Q. Does your family live in Cambodia?

10 A. Yes.

11 Q. And who is in your family?

12 A. My maternal grandmother and my mom.

13 Q. Anybody else besides your maternal grandmother and your
14 mom?

15 A. Yes. My younger sibling.

16 Q. Your younger sister?

17 A. Yes.

18 Q. And do they all live together?

19 A. Yes.

20 Q. Do you live with them?

21 A. Yes.

22 Q. When you are in Cambodia, do you live at a center called
23 Hagar?

24 A. Yes.

25 Q. Do you visit? Do you get to talk to members of your

1 family?

2 A. Yes.

3 Q. Do you visit members of your family?

4 A. Yes.

5 Q. Do you get to visit with your grandmother?

6 A. Yes.

7 Q. I want you to take a look at a photograph. It's
8 Government's Exhibit 1158.

9 A. Yes.

10 Q. I.T., what is that a picture of?

11 A. This is a picture of my house.

12 MS. DONAHUE: Move 1158 into evidence.

13 THE COURT: Admitted.

14 (Government's Exhibit 1158 was received)

15 BY MS. DONAHUE:

16 Q. Who all lives at this house?

17 A. My parents and my grandmother.

18 Q. And does your grandmother have a job?

19 A. No.

20 Q. Does your mom have a job?

21 A. No.

22 Q. Does anybody who lives in the house have a job?

23 A. Yes.

24 Q. Who is that?

25 A. My father and also my --

1 THE INTERPRETER: O-U-T? May the interpreter inquire?

2 THE COURT: Yes.

3 (Interpreter confers with witness)

4 THE WITNESS: My uncle.

5 BY MS. DONAHUE:

6 Q. What job does your uncle have?

7 A. He sells ice cream.

8 Q. He sells ice cream?

9 A. Yes.

10 Q. What job does your father have?

11 A. He also sells ice cream.

12 Q. Let's talk about the Hagar center.

13 A. Yes.

14 Q. Do you go to school there?

15 A. Yes.

16 Q. What grade are you in?

17 A. I am in second grade.

18 Q. What subjects do you study in second grade?

19 A. I study Cambodian language.

20 Q. What else do you study?

21 A. English.

22 Q. Do you study -- what else do you study besides English and
23 Cambodian language?

24 A. I study Vietnamese language, how to write it.

25 Q. What is your favorite subject to study?

1 A. I like English.

2 Q. What do you like to do for fun?

3 A. I like to swim.

4 Q. Are you learning how to swim?

5 A. Yes.

6 Q. Do you also like to dance?

7 A. Yes.

8 Q. What do you want to do when you grow up?

9 A. I want to be a singer.

10 Q. What kind of songs do you like to sing?

11 A. I like to sing songs about love of my mom and God.

12 Q. I would like show you a photograph, Government's
13 Exhibit 1077. Sorry, Your Honor. Now I have misplaced it.

14 I.T., what is in that photograph?

15 A. This is Michael's house.

16 Q. How do you know that that is Michael's house?

17 A. Because I used to live in there.

18 Q. Do you remember about when you lived in Michael's house?

19 A. I don't remember.

20 Q. That's okay.

21 Did anybody live with you at Michael's house?

22 A. Yes.

23 Q. Who lived at Michael's house at the same time that you did?

24 A. No.

25 Q. Did other girls live at Michael's house at the same time

1 that you did?

2 A. Yes.

3 Q. Can you tell us what their names are?

4 A. Yes.

5 Q. What are their names?

6 A. S.S.xxx, L.K.xxx, S.R.xxx.

7 Q. Did Michael live there, too?

8 A. Yes.

9 Q. How did you come to live at Michael's house?

10 A. Because Ms. Sang, she brought me there.

11 Q. Ms. Sang?

12 A. Yes.

13 Q. If you could take a look at a photograph. It's
14 Government's Exhibit 2067.

15 THE COURT: It's in evidence. Just put it on the
16 screen.

17 MS. DONAHUE: I will just put it on the screen. Thank
18 you, Your Honor.

19 Q. I.T., can you take a look at the screen. Who is the lady
20 in that picture?

21 A. Ms. Sang.

22 Q. Is this the lady that brought you to Michael's house?

23 A. Yes.

24 Q. How did she bring you to Michael's house?

25 A. She took me there.

1 Q. Did she take you there on a motor bike?

2 A. Yes.

3 Q. Did she talk to you before she brought you to Michael's
4 house?

5 A. No.

6 Q. Who did she talk to before she brought you to Michael's
7 house?

8 A. She spoke with Ms. Batam.

9 Q. Who is Ms. Batam?

10 A. I know Ms. Batam, but I don't know who she is.

11 Q. Is she a lady in your neighborhood?

12 A. Yes.

13 Q. A lady who lived near you?

14 A. Not too close.

15 Q. When you were at Michael's house, did he ever take your
16 picture?

17 A. Yes.

18 Q. I'm going to show you a photograph, Government's
19 Exhibit 1335. Who is that a picture of?

20 A. Me.

21 MS. DONAHUE: Move 1335 into evidence.

22 THE COURT: Admitted.

23 (Government's Exhibit 1335 was received)

24 BY MS. DONAHUE:

25 Q. Who took this picture?

1 A. Mr. Michael.

2 Q. Where were you when he took this picture?

3 A. I was standing upstairs.

4 Q. Where did you get the stuffed bunny rabbit that you're
5 holding?

6 A. He bought it for me.

7 Q. When you say "he," do you mean Michael?

8 A. Yes.

9 Q. Did you have any stuffed bunnies like this at -- bad
10 question. I'm sorry.

11 Had you ever had a stuffed bunny before?

12 A. No.

13 Q. Did you like the bunny?

14 A. No.

15 Q. Why?

16 A. Because the stuff that he bought, I don't like them.

17 Q. Are you smiling in this picture?

18 A. No.

19 Q. Why not?

20 A. Because I was angry at him.

21 Q. Why were you angry at Michael?

22 A. Because I did not like him taking picture of me.

23 Q. I would like you to take a look at another picture,
24 Government's Exhibit 1336.

25 A. Yes.

1 Q. What is that a picture of?

2 A. These are picture.

3 Q. Who took that picture?

4 A. Mr. Michael.

5 Q. Are you in that picture?

6 A. Yes.

7 MS. DONAHUE: Move 1336 into evidence.

8 THE COURT: Admitted.

9 (Government's Exhibit 1336 was received)

10 BY MS. DONAHUE:

11 Q. Is that you in the white outfit with the purple in the
12 center?

13 A. Yes.

14 Q. If I start over on the right-hand side of the picture, who
15 is that girl?

16 A. The name is S.S.xxx.

17 Q. Who is the girl to her left?

18 A. L.K.xxx.

19 Q. And that's you?

20 A. Yes.

21 Q. Who is next to you?

22 A. S.R.xxx.

23 Q. And do you remember this girl's name, the girl on the far
24 left?

25 A. I remember her but she did not tell me her name.

1 Q. What is in front of you in this picture?

2 A. The umbrellas and the rabbit.

3 Q. And is that the rabbit that you were holding in the other
4 picture?

5 A. Yes.

6 Q. Where did the umbrellas come from?

7 A. He bought those.

8 Q. Who bought those?

9 A. Mr. Michael.

10 Q. Did he give them to you?

11 A. Yes.

12 Q. It's kind of hard to tell. Are you smiling in this
13 picture?

14 A. No.

15 Q. How come?

16 A. Because I didn't like it.

17 Q. What didn't you like?

18 A. I did not want to have my picture taken.

19 Q. Why not?

20 A. Because I hate him taking my picture.

21 Q. Why do you hate Michael taking your picture?

22 A. Because I did not want him to take my picture.

23 Q. Can you take a look just a couple more pictures.

24 Government's Exhibit 1341.

25 Who is that a picture of?

1 A. This is my picture.

2 MS. DONAHUE: Move 1341 into evidence.

3 THE COURT: Admitted.

4 (Government's Exhibit 1341 was received)

5 BY MS. DONAHUE:

6 Q. Who took this picture?

7 A. Mr. Michael.

8 Q. One more picture. Government's Exhibit 1342. What is that
9 a picture of?

10 A. This is a picture of us.

11 MS. DONAHUE: Move 1342 into evidence.

12 THE COURT: Admitted.

13 (Government's Exhibit 1342 was received)

14 BY MS. DONAHUE:

15 Q. When you say "a picture of us," who do you mean?

16 A. The picture that -- the sisters and I are in there.

17 Q. When you say the sisters, are the other girls in that
18 picture in your family?

19 A. No.

20 Q. How come you call them sisters?

21 A. Because they are older.

22 Q. Because they are older?

23 A. Yes.

24 Q. Are all of them older than you?

25 A. Yes.

1 Q. Are you sure that S.R.xxx is older than you are?

2 A. No.

3 Q. Is "sisters" a word that you use to talk about other women
4 who are friends, other girls who are friends?

5 A. No, that's not right.

6 Q. Tell me what "sisters" means.

7 A. Only when they older than me, then I will call sister.

8 Q. Only when they're older than you?

9 A. Yes.

10 Q. Okay.

11 But when you call these girls sisters, you don't mean
12 that all of you have the same mother; is that right?

13 A. Yes.

14 Q. These pictures were all taken on the second floor of
15 Michael's house; is that right?

16 A. Yes.

17 Q. And when you stayed in Michael's house, where did you
18 sleep?

19 A. I slept inside his house.

20 Q. Take a look at this photograph, Government's Exhibit 1079.
21 What is that a picture of?

22 A. This the picture inside my room.

23 Q. Is that the room where you slept when you were at Michael's
24 house?

25 A. Yes.

1 Q. And did the other girls who were at Michael's house sleep
2 there, too?

3 A. Yes.

4 Q. When you were at Michael's house, did you ever go into his
5 bedroom?

6 A. Yes.

7 Q. Can you please take a look at a photograph, Government's
8 Exhibit 1096.

9 I.T., do you know what is that a picture of?

10 A. Yes.

11 Q. What is that a picture of?

12 A. Inside his room.

13 Q. When you say "his room," who do you mean?

14 A. His bedroom.

15 Q. Is that Michael's bedroom?

16 A. Yes.

17 THE COURT: Ms. Donahue, whenever it's a good time to
18 break, let me know because it's almost 2:00 and I have the other
19 jury to deal with, ten minutes, five minutes or so.

20 MS. DONAHUE: This is probably a really good time,
21 Your Honor. Thank you.

22 THE COURT: Ladies and gentlemen, don't talk about the
23 case or form or express any opinions about the case until it's
24 finally submitted to you. You are ordered to return tomorrow at
25 8:00 a.m. and you are ordered to have a good evening.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE DALE S. FISCHER, JUDGE PRESIDING

United States of America,)
Plaintiff,)
vs.) Case No.
) CR 07-168 (A) -DSF
Michael Joseph Pepe,)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS

Day 5

Los Angeles, California

Thursday, May 15, 2008

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20 ICE SPECIAL AGENT EDDY WANG
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22 THE INTERPRETERS: MORYVANN PAIGNE, CAMBODIAN
23 ANN SPIRATOS, VIETNAMESE
24
25

1 THE COURT: All right. Mr. Pierson is going to check
2 and see how we are doing with the jurors.

3 MS. DONAHUE: Would Your Honor like us to have the
4 witness here on the witness stand? The interpreter is here,
5 but --

6 THE COURT: Yes, please.

7 MS. DONAHUE: Okay.

8 THE COURT: Which page and line number are we talking
9 about?

10 MR. GUNN: Your Honor, it's Page 137, Line 14 and then
11 the questions above to which it refers. It would be dealt with
12 at a later recess, Your Honor. I guess we are preparing the
13 redacted version.

14 (Jury In)

15 THE COURT: Good morning. Everyone is present, our
16 witness is back on the stand. The interpreter is still under
17 oath.

18 I.T., you still have to tell the truth.

19 THE WITNESS: Yes.

20 THE COURT: You may proceed.

21 MS. DONAHUE: Thank you, Your Honor.

22 DIRECT EXAMINATION RESUMED

23 BY MS. DONAHUE:

24 Q. Good morning, I.T..

25 A. Yes.

1 Q. The Judge just told you you are still are under oath to
2 tell the truth, and I am going to ask you a few more questions
3 today.

4 A. Yes.

5 Q. I think when we left off yesterday, you were looking at a
6 photograph, Government's Exhibit 1077.

7 A. Yes.

8 Q. Do you know what that is a picture of?

9 A. I do.

10 Q. And can you tell us what is that a picture of?

11 A. This is the picture of Mr. Michael's house.

12 Q. And how do you know that this is a picture of Mr. Michael's
13 house?

14 A. Because I used to live in there.

15 Q. Now I am going to show you a couple of other pictures and
16 ask you if you know what they show. Government's Exhibit 1073.

17 Do you know what that picture shows?

18 A. I do.

19 Q. What does that picture show?

20 A. This is a picture of Mr. Michael's house.

21 Q. And is this the gate in front of his house?

22 A. Yes.

23 Q. And I have another picture to show you.

24 A. Yes.

25 Q. I.T., do you know what that is a picture of?

1 A. Yes.

2 Q. What is that a picture of?

3 A. This is his car.

4 Q. When you say "his car," do you mean Michael's car?

5 A. Yes.

6 Q. Was that his car that was parked in the driveway of his
7 house?

8 A. Yes.

9 Q. I.T., when you were at Michael's house, were there other
10 girls there?

11 A. Yes.

12 Q. Who were some of those girls?

13 A. Sister L.K.xxx, S.S.xxx, S.R.xxx.

14 Q. I am going to show you another picture, Government's
15 Exhibit 1129.

16 Do you know what that picture shows?

17 A. Yes.

18 Q. What does that picture show?

19 A. This is a picture of his house.

20 Q. Is it a picture of a room inside of his house?

21 A. Yes.

22 Q. Do you remember whether that room was upstairs or
23 downstairs?

24 A. Downstairs.

25 Q. Now, when you were at Michael's house, did you sleep there?

1 A. Yes.

2 Q. I am going to show you another picture, Government's
3 Exhibit 1079.

4 Do you know what that is a picture of?

5 A. Yes.

6 Q. What's that a picture of?

7 A. This is our room where we slept.

8 Q. When you say "our room," who do you mean?

9 A. The room where we slept.

10 Q. When you say "you," do you mean you and the other girls?

11 A. Yes.

12 Q. Now, is this room in this picture, Government's
13 Exhibit 1079, the only bedroom in Michael's house?

14 A. Yes.

15 Q. Is there another bedroom in Michael's house?

16 A. Yes.

17 Q. I am going to show you another picture, Government's
18 Exhibit 1096.

19 A. Yes.

20 Q. I.T., do you know what that is a picture of?

21 A. Yes.

22 Q. What is that a picture of?

23 A. This is inside his bedroom.

24 Q. Were you ever inside Michael's bedroom?

25 A. Yes.

1 Q. Were you inside Michael's bedroom more than one time?

2 A. Yes.

3 Q. I want you to think about the first time you were in
4 Michael's bedroom. Do you remember what happened?

5 A. Yes.

6 Q. Can you tell us what happened the first time that you were
7 in Michael's bedroom?

8 A. The first time when I was his room, he gave me medications
9 or drugs to take and then he asked me to go on the bed to go to
10 sleep.

11 Q. How did he give you medications?

12 A. He gave the medication to the lady boss, and he asked the
13 lady boss to give it to me to take.

14 Q. And when you say "the lady boss," do you remember her name?

15 A. Yes.

16 Q. What was her name?

17 A. Her name is Basang.

18 Q. I will show you a picture, Government's --

19 A. Yes.

20 Q. -- Exhibit 2067.

21 Do you know who is the lady in that picture?

22 A. Yes.

23 Q. Who is that lady?

24 A. Basang.

25 Q. Now, going back to the first time that you were in

1 Michael's bedroom --

2 A. Yes.

3 Q. -- did Michael have Basang give you some medicine?

4 A. Yes.

5 Q. What did the medicine look like?

6 A. That one looks a little rounded.

7 Q. Was it a pill?

8 A. Yes.

9 Q. Did you drink anything?

10 A. No.

11 Q. Did you swallow the pill?

12 A. No.

13 Q. What did you do with the pill?

14 A. He asked me to take it so he took water and give it to me.

15 Q. Did you drink the water?

16 A. Yes.

17 Q. When you drank the water, did you swallow the pill?

18 A. Yes.

19 Q. What happened after you swallowed the pill?

20 A. After I took the pill, then I began to feel sleepy.

21 Q. And what did you do when you began to feel sleepy?

22 A. I slept, so he asked me to go to the bed to sleep, and then
23 he used ropes to tie my hands and my legs.

24 Q. Which bed did you go to?

25 A. His bed.

1 Q. Is that the bed in this picture?

2 A. Yes.

3 Q. You said he used ropes to tie you.

4 Can you describe what he did?

5 A. Yes.

6 Q. Tell us what he did when he had the rope in his hand.

7 A. He tied my hands like this and then he tied my legs, too.

8 THE COURT: The witness is describing her wrists
9 touching one another with her hands up.

10 BY MS. DONAHUE:

11 Q. Did he also tie your legs?

12 A. Yes.

13 Q. How did he tie your legs?

14 A. He took a rope out and he tied my legs.

15 Q. Which part of your legs did the rope touch?

16 A. At the ankles.

17 Q. And did he wrap the rope around your ankles?

18 A. Yes.

19 Q. After that, what did he do?

20 A. And then he took his penis out and then he put that one
21 inside my vagina and then he raped me and I bled.

22 Q. Did you make any noise?

23 A. Yes, but -- no, but I cried.

24 Q. Did he put anything on your face?

25 A. Yes.

1 Q. What did he put on your face?

2 A. He took a string or a rope, black color, and he covered my
3 eyes, and he took another piece of cloth or rag, red, and put in
4 my mouth.

5 Q. Did it feel like it was gagging you?

6 A. Yes.

7 Q. Did you pass out for a little while?

8 A. Yes.

9 Q. And when you woke up, what did you see?

10 A. When I woke up, I saw myself being tied up and then blood
11 everywhere.

12 Q. Where were you bleeding from?

13 A. From my mouth.

14 Q. Were you bleeding from anyplace else besides your mouth?

15 A. No.

16 Q. Do you remember any blood on the sheets, on the bed?

17 A. Yes.

18 Q. Did you have any pain?

19 A. Yes.

20 Q. Where did you have pain?

21 A. At my vagina.

22 Q. And what did you do after you woke up?

23 A. When I woke up, he removed the ropes.

24 Q. After the rope was gone, what did you do?

25 A. When he take off the ropes, I fainted.

1 Q. Can you describe what happened after you woke up?

2 A. When I woke up again, I saw inside my body has all blood.

3 Q. Did you go to the bathroom and wash yourself?

4 A. Yes.

5 Q. And at -- did this happen a second time at Michael's house?

6 A. Yes.

7 Q. I want you to think about the second time.

8 A. Yes.

9 Q. Was it also in Michael's bedroom?

10 A. Yes.

11 Q. What happened the second time?

12 A. The second time he asked me to go to sleep with him again.

13 Q. How did you know that he was asking you to sleep with him

14 again?

15 A. He asked me to go take a shower, and then he took some

16 medication or whatever to put on my vagina.

17 Q. I.T., do you speak English?

18 A. No. But Ms. Sang, she spoke English.

19 Q. Did Michael speak -- I'm sorry. Did Michael speak Khmer?

20 A. No.

21 Q. So how did you know that Michael wanted you to take a

22 shower?

23 A. Because he spoke in English and Basang translated for me.

24 Q. What did you do when Basang told you to take a shower?

25 A. She asked me to take my clothes off and go take a shower

1 and then after that I could sleep with him.

2 Q. Did you want to do that?

3 A. No.

4 Q. When you went to take a shower, what bathroom did you use?

5 A. I used his bathroom.

6 Q. I am going to show you a picture. It's Government's
7 Exhibit 1107.

8 I.T., do you know what that is a picture of?

9 A. Yes.

10 Q. What is that a picture of?

11 A. Inside his bathroom.

12 Q. When you took a shower inside his bathroom, were you by
13 yourself?

14 A. No. I took a shower with him also.

15 Q. So was Michael in the shower with you?

16 A. No. He was standing inside the bathtub and outside.

17 Q. He was standing inside the bathtub?

18 A. Yes.

19 Q. Looking at the picture, can you tell us where you were?
20 Government's Exhibit 1107.

21 A. I was standing right here.

22 Q. Were you standing inside the bathtub?

23 A. No.

24 Q. Were you standing outside the bathtub?

25 A. Yes.

- 1 Q. When you were in the bathroom, did Michael touch you?
- 2 A. No.
- 3 Q. What happened after you finished taking a shower?
- 4 A. After I took a shower, he asked me to go outside to dry
- 5 myself, and then he put some medication on me.
- 6 Q. When you say he put some medication on you, can you
- 7 describe what he did?
- 8 A. He used medication and he applied on my vagina.
- 9 Q. Was it a cream or an oil?
- 10 A. Cream.
- 11 Q. Did the cream come out of a tube?
- 12 A. Yes.
- 13 Q. How did it feel when he rubbed it on your vagina?
- 14 A. I felt pain.
- 15 Q. What happened after he rubbed the cream on your vagina?
- 16 A. And then he also put it on his own penis, too.
- 17 Q. He rubbed the cream on his penis?
- 18 A. Yes.
- 19 Q. Did you see him do that?
- 20 A. Yes.
- 21 Q. What happened after he rubbed the cream on his penis?
- 22 A. And then he took his penis, put it inside my vagina.
- 23 Q. Were you on the bed?
- 24 A. Yes.
- 25 Q. Did he use -- did he tie you up?

1 A. No.

2 Q. Did he give you a pill to take like he had the first time?

3 A. No.

4 Q. Did you say anything to him when he was doing this?

5 A. I told him don't do it anymore because I'm still a child.

6 Q. Was anybody else in the room when this happened?

7 A. No.

8 Q. What did he do with his penis?

9 A. He took his penis, put inside my vagina.

10 Q. I'm going to show you a picture.

11 A. Yes.

12 Q. It's Government's Exhibit 1095.

13 I.T., do you know what that is a picture of?

14 A. Yes.

15 Q. What is that a picture of?

16 A. That's a tube of cream.

17 Q. Is that the cream -- the tube that had the cream that he

18 rubbed on your vagina and on his penis?

19 A. Yes.

20 Q. The second time, did you have any bleeding?

21 A. Yes.

22 Q. During the time that you were at Michael's, did he put his

23 penis into your vagina ever again?

24 A. Yes.

25 Q. Did he do it a third time?

1 A. No. He just did a second time only.

2 Q. So he did it two times; is that right?

3 A. Yes.

4 Q. When you were at Michael's, did he also have you give him
5 massages?

6 A. Yes.

7 Q. Where was he when you gave him a massage?

8 A. He was also there.

9 Q. When you say there, do you mean in his bedroom?

10 A. Yes.

11 Q. When you gave him a massage, what was he wearing?

12 A. He wore sleeping clothes.

13 Q. He wore sleeping clothes?

14 A. Yes.

15 Q. Did he wear sleeping clothes every time that you gave him a
16 massage?

17 MR. BROWN: Objection, Your Honor. Assumes facts not
18 in evidence.

19 THE COURT: Overruled.

20 MR. BROWN: Leading.

21 THE WITNESS: No. He took them off.

22 BY MS. DONAHUE:

23 Q. What did you wear when you gave him a massage?

24 A. I wore my sleeping clothes.

25 Q. Did you always keep your sleeping clothes on?

1 A. Yes.

2 Q. Were you the only girl who gave him a massage?

3 A. Yes.

4 Q. Were there other girls there at the same time that you were
5 there when you gave Michael a massage?

6 A. Yes.

7 Q. Can you explain what happened when you gave Michael a
8 massage?

9 A. While I'm giving him the massage, he asked another one to
10 suck his penis.

11 Q. When you say "asked another one," do you mean another girl?

12 A. Yes.

13 Q. Who was the other girl who sucked his penis?

14 A. Sister L.K.xxx.

15 Q. Did you see sister L.K.xxx suck on Michael's penis?

16 A. Yes.

17 Q. Did you see any other girl suck on Michael's penis?

18 A. Yes.

19 Q. Who?

20 A. S.R.xxx.

21 Q. Did you see any girl besides S.R.xxx and L.K.xxx suck on
22 Michael's penis?

23 A. S.S.xxx.

24 Q. Is that S.S.xxx, S.R.xxx's sister?

25 A. Yes.

1 Q. Did you also suck on Michael's penis?

2 A. Yes.

3 Q. What happened when you sucked on his penis?

4 A. When I suck on his penis, he said that if I did not suck
5 out the water, that he would not give me the money.

6 Q. How much money did you think he was going to give you?

7 A. I don't know.

8 Q. Did you suck out the water?

9 A. No.

10 Q. What did you do?

11 A. I was afraid to suck.

12 Q. Did you also touch Michael with your hands?

13 A. No. Only massage.

14 Q. What did you do to massage him?

15 A. I squeezed his back.

16 Q. The massage where you and the other girls sucked on his
17 penis, did that happen more than one time?

18 A. Yes.

19 Q. Did it happen more than two times?

20 A. Yes.

21 Q. Do you remember how many times it happened?

22 A. I remember it was a week.

23 Q. When you say it was a week, what do you mean?

24 A. I remember in the week he asked me to come up to massage
25 for him every day.

1 Q. How would he ask you to come up for massage?

2 A. He called me. I heard "massage, massage," so I knew.

3 Q. And then when you heard "massage," would you go up to his
4 room?

5 A. Yes.

6 Q. How come?

7 A. Because he asked me to.

8 Q. I.T., how did you come to live at Michael's house?

9 A. Because Ms. Sang, she brought me there.

10 Q. How did she bring you there?

11 A. Because I went out and I bought some ice for Batam, and she
12 called Basang over and Ms. Sang brought me -- took me away.

13 Q. What did you think you were going to do at Michael's house?

14 A. I heard that when I went to his house, I would be sending
15 to school.

16 Q. Who told you that?

17 A. Ms. Sang, Basang.

18 Q. Now, I.T., I want you to take a look around the courtroom
19 and tell me if you see Michael.

20 A. Yes.

21 Q. Can you point to where you see him?

22 A. He's right there.

23 Q. Over here there are three men at the table. Is he the man
24 who is closest to me? Or is he the man in the middle? Or is he
25 the man at the end of the table?

1 A. The man who sits the end of the table.

2 THE COURT: Indicating the defendant, Mr. Pepe.

3 BY MS. DONAHUE:

4 Q. I.T., did you ever get any money when you were at Michael's
5 house?

6 A. Yes. A little.

7 Q. Where did you get the money?

8 A. He gave to me.

9 Q. Michael gave you money?

10 A. Yes.

11 Q. When did he give you money?

12 A. After I was asked to suck his penis, then he gave me the
13 money.

14 Q. How much money did he give you?

15 A. He gave me a dollar.

16 Q. And did he give you a dollar every time that you sucked his
17 penis?

18 A. Yes.

19 Q. How about after he put his penis into your vagina, did he
20 give you any money after that?

21 A. No.

22 Q. How about the second time?

23 A. He gave the money the second time.

24 Q. And who did he give the money to?

25 A. He gave the money to Basang.

1 Q. Do you know how much money he gave to Basang?

2 A. Yes.

3 Q. How much?

4 A. One hundred.

5 Q. Is that \$100 or one hundred riel?

6 A. \$100.

7 Q. Do you know what Basang did with that \$100?

8 A. I don't know.

9 Q. Now, did there come a time when you left Michael's house?

10 A. Yes.

11 Q. How did you leave Michael's house?

12 A. I left. She took me away. She was the one who took me
13 home.

14 Q. Who took you home?

15 A. Basang.

16 Q. Did you want to go home?

17 A. Yes.

18 Q. Did you like staying at Michael's house?

19 A. No.

20 Q. Did you tell anybody that you wanted to go home?

21 A. Yes.

22 Q. Who did you tell?

23 A. I told Basang.

24 MS. DONAHUE: I have no further questions.

25 THE COURT: Thank you. Cross-examination?

CROSS-EXAMINATION

BY MR. BROWN:

Q. Good morning, I.T..

A. Yes.

Q. My name is Charles, and I'm one of Michael's attorneys.

And I have to ask you a few questions, okay?

A. Yes.

Q. I want to ask you a few questions about your background.

Okay?

A. Yes.

Q. How old are you?

A. I am 13.

Q. You were raised in Cambodia?

A. Yes.

Q. And you grew up with your mother; right?

A. With my grandmother.

Q. With your grandmother. Okay. And your stepfather; right?

A. Yes.

Q. Where do you live now?

A. Now I'm living in Cambodia.

Q. Where in Cambodia do you live?

A. I live at Saigon Bridge.

Q. Do you live at Hagar, the Hagar Center?

A. Yes.

Q. How long have you lived there?

1 A. I living there a long time.

2 Q. More than a year?

3 A. No.

4 Q. Do you get to see your grandmother when you're living at
5 Hagar?

6 A. Yes.

7 Q. How often do you get to see her?

8 A. Once a month.

9 Q. Do you like living at Hagar?

10 A. Yes.

11 Q. You said yesterday that it's fun there; right?

12 A. Yes.

13 Q. You like to swim and play; right?

14 A. Yes.

15 Q. Before living at Hagar, where did you live?

16 A. I lived in Bottatong (phonetically).

17 Q. You said earlier that a lady named Batam introduced you to
18 the person named Basang; do you remember that?

19 A. Yes.

20 Q. And do you know who Batam, the lady Batam, was?

21 A. Yes.

22 Q. Who was Batam?

23 A. Batam, she was a person who introduced me to that boss, the
24 lady boss.

25 Q. And how did you know Batam?

1 A. Because I know her.

2 Q. From where?

3 A. Because my mom knows her. My mom hang out with her every
4 day.

5 Q. You said that Basang, the lady Basang, took you to
6 Michael's house?

7 A. Yes.

8 Q. And you said that you didn't like living at Michael's
9 house; right?

10 A. Yes.

11 Q. Do you remember when that was that you were taken to
12 Michael's house?

13 A. No.

14 Q. Was it in May -- May of 2006?

15 A. Yes.

16 Q. Okay.

17 And do you know how long you were at Michael's house?

18 A. I know it's a long time, but I don't know what month.

19 Q. Do you remember how long you were there?

20 A. Long.

21 Q. And is it -- is it true, I.T., that you went back and forth
22 to Michael's house a couple of times?

23 A. No.

24 Q. Do you remember telling the person standing there, Gary,
25 that you were at Michael house for three to four days?

1 A. I don't understand.

2 Q. Did you -- do you remember when Gary asked you some
3 questions a couple of years ago? Do you remember meeting with
4 Gary and some other people and them asking you questions?

5 A. Yes.

6 Q. There were a few people in the room; right?

7 A. Yes.

8 Q. It was Gary and a lady who spoke Vietnamese; right?

9 A. Yes.

10 Q. The lady who spoke Vietnamese, did you know her?

11 A. Yes.

12 Q. She was a lady who worked at World Hope; right?

13 A. Yes.

14 Q. Was she a friend of yours from World Hope?

15 A. She was my mother.

16 Q. What do you mean by that?

17 A. What I mean is that when I was in World Hope, she was my
18 mother.

19 Q. So she was the one who was interpreting Gary's questions
20 into Vietnamese; right?

21 A. No.

22 Q. Was she asking you questions when Gary was asking you
23 questions?

24 A. No. Uncle Tom translated the meaning.

25 Q. So do you remember -- when they were asking you questions,

1 do you remember telling them that you were only there for --
2 only at Michael's house for about three to four days?

3 A. No. That's not true.

4 Q. Do you remember yesterday when the prosecutor showed you
5 some pictures at Michael's house?

6 A. Yes.

7 Q. And you said you weren't happy because you didn't like
8 Michael taking pictures of you?

9 A. Yes.

10 Q. I would like to show you a couple of pictures, and I want
11 to talk about them. Okay?

12 A. Yes.

13 MR. BROWN: Your Honor, I have what has been remarked
14 as Defense Exhibit 368. I believe that might have been provided
15 to the Government already. And to the Court. And I also have
16 Defense Exhibit 369, which I am providing a copy to the
17 Government and I have a copy for the Court and for the witness.
18 If I may approach, Your Honor?

19 THE COURT: Yes.

20 MR. BROWN: Your Honor, I would like --

21 THE COURT: Any objection to 368 or 369?

22 MS. DONAHUE: No objection.

23 THE COURT: All right. Those are admitted.

24 (Defendant's Exhibits 368 and 369 were received)

25 MR. BROWN: May I publish?

1 THE COURT: Yes.

2 BY MR. BROWN:

3 Q. I.T., if you could look at 368, is that you in the picture?

4 A. Yes.

5 Q. And who is that with you?

6 A. That was me, S.S.xxx and S.R.xxx.

7 Q. And you're smiling in that picture; right?

8 A. He asked me to smile.

9 Q. And if I could show you the next picture which is 369, is
10 that you in the picture there on the right, I.T.?

11 A. Yes.

12 Q. And it looks like you're playing with S.R.xxx and S.S.xxx.

13 A. Yes.

14 Q. And you're -- it looks like you're having fun there.

15 A. I was playing with these sisters. I did not know that he
16 was taking pictures.

17 Q. I.T., do you remember -- if we could talk again about when
18 you were being interviewed by Gary.

19 A. No.

20 Q. We were just talking about when you were in a room and Gary
21 was asking you questions and there was an interpreter there and
22 they had a video camera.

23 Do you remember that?

24 A. Yes.

25 Q. Okay.

1 And do you remember Gary showing you a photo of a
2 person that he thought might have been the person who you say
3 hurt you?

4 Do you remember that?

5 A. Yes.

6 Q. Do you remember being shown a photo of a person and you
7 saying that that's not the man?

8 A. Yes.

9 Q. When you -- when you were staying with Michael, you never
10 saw a mark on his leg, did you?

11 A. Yes.

12 Q. You never saw -- you never saw a mark?

13 A. Yes.

14 Q. The prosecutor asked you some questions about massaging
15 Michael.

16 Do you remember those questions?

17 A. Yes.

18 Q. Do you remember telling Gary that the other girls that were
19 there forced you or teased you about not wanting to massage
20 Michael?

21 A. Yes.

22 Q. So L.K.xxx and the other girls were teasing you about that;
23 right?

24 A. Yes.

25 Q. What did they say when they were teasing you?

1 A. Those sisters, they told me that how come I'm so stupid I
2 didn't massage him.

3 MR. BROWN: Your Honor, may I have one moment?

4 THE COURT: Yes.

5 (Mr. Brown and Mr. Gunn confer off the record)

6 BY MR. BROWN:

7 Q. I.T., before going to -- going to Michael's, you used to
8 work at a place; right? At a massage parlor?

9 A. I don't understand.

10 Q. Did you work at a bad place before going to Michael's?

11 A. That's not true.

12 Q. With respect to the dates that you say that these happened,
13 do you recall telling Gary that it happened on May 23rd and
14 May 26th of 2006?

15 A. Yes.

16 MR. BROWN: Your Honor, I have no further questions.
17 Thank you.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MS. DONAHUE:

21 Q. I.T., when you were at Michael's house, did any man, other
22 than Michael, put his penis inside your vagina?

23 A. No.

24 Q. When you were at Michael's house, did any man, other than
25 Michael, have you suck on his penis?

1 A. No.

2 MS. DONAHUE: I have no further questions.

3 THE COURT: Any recross?

4 MR. BROWN: No further questions, Your Honor. Thank
5 you.

6 THE COURT: I.T., you're finished.

7 Does the Government have another witness?

8 MS. DONAHUE: Yes, Your Honor. The Government calls
9 K.S.x.

10 Your Honor, for the record, we are changing to the
11 Cambodian interpreter.

12 THE COURT: Are you the same one we had before?

13 MS. DONAHUE: Yes.

14 THE COURT: You have your hair back.

15 THE INTERPRETER: Yes.

16 THE COURT: You are still under oath.

17 K.S.x, Government's witness, was sworn

18 THE CLERK: If you could have a seat, please. I just
19 need you to state your full name and spell your first name for
20 the record.

21 THE WITNESS: K.S.x.

22 THE COURT: Interpreter spelling, please.

23 THE INTERPRETER: Sure. K-S-x-x-x.

24 THE COURT: You may proceed.

25 MS. DONAHUE: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. DONAHUE:

Q. Good morning, K.S.x.

A. Good morning.

Q. K.S.x, how old are you?

A. Fourteen.

Q. What country do you live in?

A. Khmer.

Q. Is that Cambodia?

A. Yes.

Q. Have you lived in Cambodia your whole life?

A. Yes.

Q. Does your family live in Cambodia?

A. Yes.

Q. And can you tell us who are your family members?

A. My mother, my father, my older brother, my two younger sisters.

Q. K.S.x, does your mother have a job?

A. Yes. She sells.

Q. What does your mother sell?

A. Fruits.

Q. Where does your mother sell fruits?

A. Chhambor Pho.

Q. Is that a village.

A. Market.

1 Q. Is that a market near Phnom Penh?

2 A. I don't know.

3 Q. K.S.x, does your father have a job?

4 A. No.

5 Q. Now, K.S.x, back when you were living with your family, did
6 you go to school?

7 A. Yes. A little.

8 Q. How come just a little?

9 A. I had to watch my sibling.

10 Q. When you watched your sibling, you did not go to school; is
11 that right?

12 A. Yes.

13 Q. Did your mom always have enough money to send you to
14 school?

15 A. Just a little.

16 Q. Now, K.S.x, right now do you live at a center called Agape?

17 A. Yes.

18 Q. Who else lives at Agape?

19 A. Me.

20 Q. Do other girls live there, too?

21 A. Yes.

22 Q. At Agape, do you go to school?

23 A. Yes.

24 Q. What grade are you in?

25 A. Third.

1 Q. In third grade, what do you study?

2 A. Math, Cambodian, sociology, history, math, sociology.

3 Q. K.S.x, what do you like to do for fun?

4 A. Play with my friends.

5 Q. K.S.x, I'm going to show you some pictures. Government's
6 Exhibit 1077. Can you look up here on that screen.

7 K.S.x, do you know what that is a picture of?

8 A. Michael's house.

9 Q. How do you know that picture is of Michael's house?

10 A. I used to live there.

11 Q. Do you remember when you lived there?

12 A. No.

13 Q. I'm going show you a couple more photographs. Government's
14 Exhibit 1301.

15 Do you recognize anybody in that photograph?

16 A. I only recognize myself.

17 Q. That's you in that picture?

18 A. Yes.

19 MS. DONAHUE: 1301. Move 1301 into evidence.

20 THE COURT: Have you had a chance to look at that,
21 Mr. Gunn?

22 MR. BROWN: No objection.

23 THE COURT: All right. That will come in, thank you.

24 (Government's Exhibit 1301 was received)

25 BY MS. DONAHUE:

1 Q. K.S.x, are you this girl that I'm pointing to on the left
2 side of that photo?

3 A. Yes.

4 Q. Is that you? Okay.

5 Now, do you know the name of the girl who is standing
6 next to you?

7 A. I don't know.

8 Q. Do you remember her name?

9 A. No.

10 Q. I'm going to show you a couple more photos. Government's
11 Exhibit 1302.

12 What is in that photograph?

13 A. Myself.

14 Q. Do you recognize yourself in that picture?

15 A. Yes.

16 MS. DONAHUE: I move 1302 into evidence.

17 THE COURT: Admitted.

18 (Government's Exhibit 1302 was received)

19 BY MS. DONAHUE:

20 Q. K.S.x, which girl is you in that picture? Are you the girl
21 in front or the girl behind?

22 A. In the front.

23 Q. I would like you to take a look at another picture, 1303.

24 Do you know any of the people in that photograph?

25 A. Myself and the other lady.

1 MS. DONAHUE: Move 1303 into evidence.

2 THE COURT: Admitted.

3 (Government's Exhibit 1303 was received)

4 BY MS. DONAHUE:

5 Q. In this picture, K.S.x, do you know where you are sitting?

6 A. I'm right in front of the door.

7 Q. When you say "the door," the door to which house?

8 A. That's the door going into Michael's house.

9 Q. I would like you to take a look at another picture,

10 Government's Exhibit 1304.

11 Do you know anybody in that picture?

12 A. Myself and the other lady.

13 MS. DONAHUE: Move 1304 into evidence.

14 THE COURT: Admitted.

15 (Government's Exhibit 1304 was received)

16 BY MS. DONAHUE:

17 Q. Are you this girl that I'm pointing to with my pen on the
18 screen on the left?

19 A. Yes.

20 Q. K.S.x, do you know what room that is in that picture?

21 A. I don't remember.

22 Q. Can you take a look at another photograph, Government's
23 Exhibit 1305.

24 Who is in that picture?

25 A. Myself, a little boy, and the lady.

1 MS. DONAHUE: I move 1305 into evidence.

2 THE COURT: Admitted.

3 (Government's Exhibit 1305 was received)

4 BY MS. DONAHUE:

5 Q. K.S.x, when you look at that picture, do you remember the
6 room where that picture was taken?

7 A. Maybe downstairs.

8 Q. When you say "downstairs," what house do you mean?

9 A. Michael's house.

10 Q. Can you take a look at another picture, Government's
11 Exhibit 1306.

12 Who is in this picture?

13 A. Myself, the lady and the little boy.

14 MS. DONAHUE: Move 1306 into evidence.

15 THE COURT: Admitted.

16 (Government's Exhibit 1306 was received)

17 BY MS. DONAHUE:

18 Q. In this picture, is that you holding the little boy?

19 A. Yes.

20 Q. K.S.x, do you know where this picture was taken?

21 A. Outside in front of the house.

22 Q. Is that outside in front of Michael's house?

23 A. Yes.

24 Q. One more. Can you take a look at Government's
25 Exhibit 1307.

Who is in that picture?

A. Myself, the lady and the little boy.

MS. DONAHUE: Move 1307 into evidence.

THE COURT: Admitted.

(Government's Exhibit 1307 was received)

BY MS. DONAHUE:

Q. What are you doing in this picture?

A. Taking pictures.

Q. Are you waving?

A. Yes.

Q. K.S.x, do you remember who took this picture?

A. Maybe Michael.

Q. Maybe Michael, but you're not sure; is that right?

A. Yes.

Q. Do you remember the name of the lady who is standing next to you?

A. No. I cannot.

Q. Did she live at Michael's house at the same time that you did?

A. Yes.

Q. Besides that lady and the little boy and Michael and you, did anybody else live at Michael's house?

A. There was a maid. Maybe is the father of the little boy.

Q. Were there any other girls at Michael's house when you were there?

1 A. Yes. But I don't remember their names.

2 Q. Was L.K.xxx at Michael's house at the same time that you
3 were at Michael's house?

4 A. No.

5 Q. Was S.R.xxx at Michael's house at the same time that you
6 were at Michael's house?

7 A. No.

8 Q. Was S.S.xxx at Michael's house at the same time that you
9 were there?

10 A. No.

11 Q. Was T.C.xx at Michael's house at the same time that you
12 were there?

13 A. No.

14 Q. Was I.T. at Michael's house at the same time that you were
15 there?

16 A. No.

17 Q. Was NTDx at Michael's house at the same time that you were
18 there?

19 A. No.

20 Q. The other girls who you said were at Michael's house at the
21 same time that you were there, do you remember any of their
22 names?

23 A. Only one.

24 Q. And what is that name?

25 A. Heang.

1 Q. Is that Heang? The girl in this picture, is that girl
2 Heang? 1107.

3 A. No.

4 Q. Okay.

5 K.S.x, when you were at Michael's house, did you ever
6 go into his room.

7 A. Heang?

8 Q. No. When you were at Michael's, did you ever go into his
9 room?

10 A. Yes.

11 THE COURT: This would be a good time for a break,
12 Ms. Donahue.

13 MS. DONAHUE: Okay.

14 THE COURT: Ladies and gentlemen, don't talk about the
15 case or form or express any opinions about the case until it's
16 finally submitted to you. We will take a break. I have another
17 question so I will try to get back to you as soon as I can.

18 (Recess taken)

19 THE COURT: Everyone is back. You still have to tell
20 the truth.

21 Ms. Donahue.

22 MS. DONAHUE: Thank you, Your Honor.

23 Q. K.S.x, I have another picture that I'm -- Government's
24 Exhibit 1089. Can you take a look at that picture.

25 Do you know what that is a picture of?

1 A. Michael's room.

2 Q. And have you been in Michael's room?

3 A. Yes.

4 Q. I'm going to show you another picture, 1096.

5 Do you know what that is a picture of?

6 A. That's Michael's bed.

7 Q. K.S.x, have you ever been on Michael's bed, the bed in that

8 picture?

9 A. Yes.

10 Q. Did something happen to you on that bed?

11 A. He hurt me.

12 Q. When you say "he," do you mean Michael?

13 A. Yes.

14 Q. What did he do to hurt you?

15 A. He told me to massage him and suck on his private sex part.

16 Q. When you say his private sex part, what do you mean?

17 A. His penis.

18 Q. What did Michael do to tell you to suck on his penis?

19 A. Basang was in there.

20 Q. Basang; is that right?

21 A. Yes.

22 Q. Did Basang do something?

23 A. She taught me.

24 Q. What did Basang teach you to do?

25 A. She taught me how to suck on the private sex part with her.

1 Q. Did Basang suck on Michael's private sex part first?

2 A. Yes.

3 Q. After she did that, what did you do?

4 A. I would suck on his private sex part the same way she
5 showed me.

6 Q. Now, did Michael do something to tell you that he wanted
7 you to suck on his private sex part?

8 A. Showed.

9 Q. What did he do to show you?

10 A. He told me to go to the room and suck on his private sex
11 part.

12 Q. Now, K.S.x, do you speak English?

13 A. No.

14 Q. And did Michael speak in Khmer to you?

15 A. No.

16 Q. So if he didn't say the words, what did he do to show you
17 what he wanted?

18 A. Gestures.

19 Q. And what gestures did he make?

20 A. He pulled my head and -- towards his private sex part.

21 Q. What did you do?

22 A. I just followed through.

23 Q. Did something come out of his penis?

24 A. Yes.

25 Q. What came out?

1 A. Sperm.

2 Q. And did you taste it?

3 A. No.

4 Q. How come?

5 A. I don't want to.

6 Q. Now, did Michael have you suck on his penis more than one
7 time?

8 A. Every day.

9 Q. Did Michael give you any money after he had you suck on his
10 penis?

11 A. Yes. If I would -- were to perform, then he would give me
12 a dollar.

13 Q. I want you to take a look at another picture. This is
14 Government's Exhibit 2067.

15 Do you know who is in that picture?

16 A. Basang.

17 Q. Is that the lady that you talked about earlier who showed
18 you what to do with Michael's penis?

19 A. Yes.

20 Q. K.S.x, did Michael have you do other things besides sucking
21 on his penis?

22 A. Put his private sex part into my private sex part.

23 Q. Where did he do that?

24 A. Michael's bed.

25 Q. And did that happen one time?

1 A. About three times.

2 Q. The first time that Michael put his private sex part into
3 your private sex part, did -- what did that feel like?

4 A. I was not happy.

5 Q. Did he put his penis all the way inside?

6 A. No.

7 Q. Did he put it in just a little bit?

8 A. Yes.

9 Q. Did you say anything to him?

10 A. No.

11 Q. Did you tell him to stop?

12 A. No.

13 Q. Did he ever put his penis inside your vagina again?

14 A. Yes.

15 Q. The second time, did he put his penis in just a little bit?

16 A. No. All the way.

17 Q. What did that feel like?

18 A. Right away, it was blood.

19 Q. Did you feel pain?

20 A. Yes.

21 Q. Did you tell him to stop?

22 A. No.

23 Q. Did anything come out of his penis?

24 A. Yes.

25 Q. Now, K.S.x, either the first time or the second time, did

1 Michael tie you?

2 A. No.

3 Q. Did he ever tie you?

4 A. No.

5 Q. Did he put his penis into your vagina more than two times?

6 A. Three times.

7 Q. Did you tell him that you wanted him to stop any of those
8 three times?

9 A. No.

10 Q. Did you try to leave Michael's house?

11 A. Yes.

12 Q. What did you do?

13 A. I don't understand.

14 Q. When you tried to leave Michael's house, what did you do?

15 A. I don't -- I didn't know what to do.

16 Q. How did you come to Michael's house?

17 A. Sang.

18 Q. Basang brought you; is that right?

19 A. Yes.

20 Q. Did Basang talk to you before she brought you to Michael's
21 house?

22 A. I don't remember.

23 Q. Did Basang talk to your mother before she brought you to
24 Michael's house?

25 A. I don't know.

1 Q. Did you tell your family that you were living at Michael's
2 house?

3 A. No.

4 Q. K.S.x, did you think that you were supposed to stay at
5 Michael's house?

6 A. Yes.

7 Q. K.S.x, when you were at Michael's house, where did you
8 sleep?

9 A. Sometimes in Michael's room. Sometimes downstairs.

10 Q. When you slept in Michael's room, did you sleep next to
11 him?

12 A. Yes.

13 Q. Did you stay in the bed all night when you slept next to
14 him?

15 A. Sometimes yes; sometimes no.

16 Q. How come sometimes no?

17 A. I don't know.

18 Q. K.S.x, did there come a time when Michael left and you and
19 the maid were at the house by yourselves?

20 A. Yes.

21 Q. And then after that, did Michael come back to the house?

22 A. Yes.

23 Q. After he came back to the house did he have you suck on his
24 penis?

25 A. Yes.

1 Q. K.S.x, can you look around the room and tell me if you see
2 Michael?

3 A. He's sitting right over there.

4 Q. Can you point to where you see him?

5 A. (Witness indicates).

6 Q. Over here in the direction you pointed, there are three
7 men. There is a man who is closest to me --

8 A. Towards this side.

9 THE COURT: Where is she motioning? Tell me again,
10 please. Which end of the table? Closer to me or farther away?

11 THE WITNESS: No.

12 THE COURT: Why don't you continue, Ms. Donahue.

13 BY MS. DONAHUE:

14 Q. What color jacket is he wearing?

15 A. Black.

16 Q. Not based on my eyesight.

17 K.S.x, listen to my question. Over here at this
18 table, is he the man who is sitting closest to me or in the
19 middle, or the farthest away from me?

20 A. Closest.

21 Q. Closest to me or closest to you?

22 A. On your side.

23 Q. Okay.

24 THE COURT: The witness appears to have identified
25 Mr. Gunn.

MS. DONAHUE: I know.

Q. K.S.x, did you mean to say --

THE COURT: Go stand behind the men, Ms. Donahue.

MS. DONAHUE: You want me to stand behind them?

THE COURT: Go right ahead.

BY MS. DONAHUE:

Q. K.S.x, I am standing over here. I am standing behind this man wearing the glasses.

Is this the man who is Michael?

A. No.

Q. How about the man I'm standing next to right now?

The man in the middle, Mr. Brown?

A. No.

Q. How about the man I'm standing behind right now?

A. Yes.

THE COURT: Indicating the defendant, Mr. Pepe.

BY MS. DONAHUE:

Q. K.S.x, did you ever see Michael give Basang any money?

A. No.

Q. When you left Michael's house, who did you go with?

A. At that time, I don't remember.

Q. Did somebody come to pick you up?

A. My mother.

Q. And where did your mother take you?

A. Home.

1 Q. Did you go anyplace with your mother before you went home?

2 A. I don't understand.

3 Q. When your mother picked you up, did she take you to a
4 hospital?

5 A. Yes.

6 Q. What happened at the hospital?

7 A. They sewed me.

8 Q. Where did they sew you?

9 A. My bottom.

10 Q. K.S.x, when you were at Michael's house, were there any men
11 there other than Michael?

12 A. I don't understand.

13 Q. When you were at Michael's house, there were -- you were
14 there and there were other girls there --

15 A. No -- yes.

16 Q. And Michael was there; is that right?

17 A. Yes.

18 Q. Other than Michael, did anybody hurt you?

19 A. No.

20 MS. DONAHUE: I have no further questions.

21 THE COURT: Cross-examination?

22 CROSS-EXAMINATION

23 BY MR. BROWN:

24 Q. Good morning, K.S.x.

25 A. Good morning.

1 Q. I just want to ask you a few questions. Okay?

2 A. Yes.

3 Q. How old are you?

4 A. Fourteen.

5 Q. What languages do you speak?

6 A. Cambodian, Vietnamese.

7 Q. You speak Vietnamese; right?

8 A. Yes.

9 Q. You're fluent in Vietnamese; right?

10 A. Not really.

11 Q. Your family is Vietnamese?

12 A. Yes.

13 Q. So you speak Vietnamese growing up in the home?

14 A. Yes.

15 Q. Okay.

16 In fact, when you were interviewed -- do you remember
17 being interviewed by some people two years ago?

18 A. Where?

19 Q. In Cambodia in a room with a video camera?

20 A. Yes.

21 Q. And there was a lady there, right, who spoke Vietnamese to
22 you?

23 A. Yes.

24 Q. And a man was speaking to her in English and she was
25 speaking to you in Vietnamese; right?

1 A. Yes.

2 Q. And that lady worked for World Hope International; right?

3 A. Yes.

4 Q. And you knew that lady?

5 A. Yes.

6 Q. You guys -- you stayed at World Hope International for some
7 time; right?

8 A. Yes.

9 Q. How long did you stay at World Hope International?

10 A. I don't remember.

11 Q. How long had you known that lady?

12 A. About maybe two months or so.

13 Q. Was her name Sister Kim?

14 A. The translator?

15 Q. Yes.

16 A. What's her name?

17 Q. Kim?

18 A. I call her Kim.

19 Q. T.C.xx, we -- I'm sorry. K.S.x. K.S.x, we spoke about a
20 person named Basang. Do you remember the prosecutor showed you
21 a picture of her?

22 THE COURT: Why don't you use a word other than
23 prosecutor.

24 MR. BROWN: I'm sorry.

25 Q. Patty showed you a picture of her?

1 A. Yes.

2 Q. You know Basang; right?

3 A. Yes.

4 Q. In fact, Basang is related to you; right?

5 A. I don't know.

6 Q. Is Basang your auntie?

7 A. No. I don't know that.

8 Q. Do you remember telling the people you spoke to two years
9 ago that Basang was your Auntie?

10 A. No.

11 Q. You didn't say that?

12 A. I don't remember.

13 Q. K.S.x, you're 14 years old; right?

14 A. Yes.

15 Q. And you know the difference between a truth and a lie;
16 right?

17 A. No.

18 Q. You don't know the difference between telling the truth and
19 telling a lie?

20 A. No.

21 Q. After -- strike that.

22 Have you ever lived anywhere other than Cambodia?

23 A. Thailand.

24 Q. You lived in Thailand?

25 A. Yes.

1 Q. Did bad things happen to you in Thailand?

2 A. Yes.

3 Q. Please excuse me for asking this, I don't mean -- I'm not
4 trying to be mean, but we need to get some answers. Okay. So I
5 have to ask you this question.

6 When you were in Thailand, did a man put his penis in
7 your vagina?

8 A. Yes.

9 Q. When -- I want to talk about when you were being videotaped
10 two years ago by the police officers and there was the lady who
11 was the interpreter in Vietnamese. Okay?

12 A. Okay.

13 Q. By the way, the lady who is interpreting now is not
14 speaking Vietnamese; right?

15 A. No.

16 Q. What language is she speaking to you?

17 A. Cambodian.

18 Q. Why -- why didn't they speak to you in -- strike that.

19 Why -- why didn't you talk Khmer to the people two
20 years ago? Why did you use a Vietnamese interpreter?

21 A. During that time, I wasn't -- I didn't really speak some
22 Cambodian.

23 Q. So you learned Cambodian in two years?

24 A. Yes.

25 Q. The Vietnamese lady, when they were asking you questions,

1 the Vietnamese lady was telling you what to say; right?

2 A. I don't understand.

3 Q. Do you remember them asking you questions and you not
4 knowing the answer and the lady told you what to say?

5 A. What do you mean telling me?

6 Q. Do you remember the lady telling you -- do you remember the
7 lady telling you -- do you remember the lady telling you, "Don't
8 be afraid, tell this mister," right before the camera went off?

9 Do you remember that?

10 A. No.

11 Q. Would it refresh your recollection --

12 THE COURT: That was not an intelligible question.

13 MR. BROWN: I'll rephrase, Your Honor.

14 THE COURT: Thank you.

15 BY MR. BROWN:

16 Q. Do you remember the lady telling you to -- strike that.

17 Do you remember the lady telling you to tell the
18 mister what happened, tell the mister about the bad things that
19 happened to you?

20 A. No. I don't remember.

21 Q. Would it help you to remember if we played that portion of
22 the tape for you so you could listen to it?

23 A. Go ahead.

24 MR. BROWN: Your Honor, if we could queue up the K.S.x
25 interview, I think it was just one volume at counter 47:59 and I

1 am referring to Page 25 of the transcript.

2 THE COURT: If you have no objection, Ms. Donahue.

3 MS. DONAHUE: No objection.

4 THE COURT: All right.

5 MS. DONAHUE: If the agent could help.

6 AGENT WANG: What was the counter again, counselor?

7 MR. BROWN: 47:59. It's just a little snippet. I
8 think it's probably 10 or 15 seconds.

9 (Whereupon, the audio was played for the witness)

10 BY MR. BROWN:

11 Q. K.S.x, did you have a chance to listen to that part of the
12 tape?

13 A. I was afraid.

14 Q. Okay.

15 Do you recall -- did you hear what the lady said,
16 "Tell him, tell him"?

17 A. Oh, I just heard that, "Daughter, don't be afraid." That's
18 what I heard.

19 Q. And do you remember during that same interview when the
20 mister told you -- asked you how many times -- how many times
21 did you have sex, and you said, "Who knows"?

22 A. No. I don't remember.

23 Q. Would it refresh your recollection if we played that part
24 of the video for you?

25 A. Sure.

1 MR. BROWN: If we could just queue up at 1:03 on that
2 same tape.

3 AGENT WANG: What's that?

4 MR. BROWN: 1:03.

5 AGENT WANG: One minute, 30 seconds?

6 MR. BROWN: Yes. It's Page 31. I'm sorry. One hour
7 and three minutes.

8 AGENT WANG: For how long?

9 MR. BROWN: Ten seconds.

10 (Whereupon, the audio was played for the witness)

11 THE WITNESS: I couldn't really understand.

12 BY MR. BROWN:

13 Q. You couldn't understand because of volume -- was the volume
14 too low or you didn't understand the language?

15 A. Yes.

16 MR. BROWN: Your Honor, is there any way we could --

17 THE COURT: No. Just move on.

18 BY MR. BROWN:

19 Q. K.S.x, if I told you that you said "who knows" during that
20 interview when they asked you how many times did you have oral
21 sex, would that refresh your recollection as to what you said?

22 A. No.

23 THE COURT: By the way, that was a different question
24 from the one you asked her before.

25 MR. BROWN: Okay.

1 Q. The interpreter is the person who said four times; isn't
2 that true?

3 MS. DONAHUE: Objection. This calls for hearsay.

4 THE COURT: Overruled.

5 Do you understand the question?

6 THE WITNESS: No.

7 THE COURT: I didn't either.

8 MR. BROWN: I'll back up a little, Your Honor. I
9 apologize. I know this is a little awkward and inartful.

10 Q. K.S.x, when you were being interviewed a few years ago,
11 there were a few people asking you questions; right?

12 A. Two, three people?

13 Q. You were in a small room?

14 A. Ask again, please.

15 Q. Okay.

16 Where were you when you were interviewed in 2006?

17 A. In a room.

18 Q. That was -- was that at the embassy?

19 A. What's embassy?

20 Q. It was in a small --

21 THE COURT: Stop. Is there some dispute? If you want
22 to know what she knows or do you want to know where she was? If
23 you want to know where she was, the two of you talk and let's
24 just tell the jury where she was. If you're testing her
25 recollection about what embassy was, then you may proceed.

1 MR. BROWN: I'm not testing her recollection. I'm
2 just trying to --

3 THE COURT: Okay. Why don't you see if you agree on
4 where she was so that we can tell the jury where she was.

5 BY MR. BROWN:

6 Q. K.S.x, you were at the embassy being interviewed by an
7 agent; right? A man?

8 A. Yes.

9 Q. That man was asking you questions; right?

10 A. Yes.

11 Q. But you didn't understand the man's questions because you
12 don't speak his language; right?

13 A. Yes.

14 Q. But there was a lady sitting next to you who was telling
15 you what the man was saying; right?

16 A. Yes.

17 Q. And you gave answers in Vietnamese; right?

18 A. Yes.

19 Q. And the Vietnamese lady was telling the man what you said;
20 right?

21 A. Yes.

22 Q. But there were times when the man didn't ask you a question
23 and the Vietnamese lady asked you questions; right?

24 A. I don't remember that.

25 Q. Okay.

1 Do you remember the Vietnamese lady asking you did he
2 penetrate your vagina with a penis and you said no.

3 THE INTERPRETER: I apologize, counsel. Did you say
4 "he" or "she"?

5 MR. BROWN: "He." She asked the question.

6 THE INTERPRETER: I am sorry?

7 THE COURT: Rephrase your question.

8 MR. BROWN: I'm sorry.

9 Q. The lady from World Hope asked you a question.

10 A. Okay.

11 Q. And the question was did he penetrate your vagina with his
12 penis.

13 Do you recall your first answer to that question?

14 A. No, I don't remember.

15 Q. Okay.

16 Can we play the tape for you? Would that help you
17 remember?

18 A. Okay.

19 MR. BROWN: Your Honor, if we could have the audio
20 just double-checked for the witness, the counter is at an hour
21 six and ten seconds. Page 33 of the transcript.

22 THE COURT: Why don't you check, Agent, and make sure
23 that the volume is fine.

24 AGENT WANG: How long?

25 MR. BROWN: Five seconds.

(Whereupon, the audio was played for the witness)

THE WITNESS: I didn't hear anything yet.

THE COURT: Agent, you need to check the volume.

BY MR. BROWN:

Q. Okay.

K.S.x, were you able to hear your first answer to that question?

A. Well, it didn't get to my part yet.

Q. Okay. Okay.

Did it not get to your part because the Vietnamese lady was talking?

A. He -- she was talking.

Q. Do you remember the agent asking you, the man asking you what color the car was, Michael's car?

A. I'm not sure. Probably black.

Q. Do you remember the man asking you to describe the bed?

A. You know, during that time, I really don't remember.

Q. And that's kind of what you were saying back then, right, but it was the Vietnamese lady who said that the bed had a flower carving on it. That wasn't your answer, was it? It was the Vietnamese lady's answer.

A. I don't know.

MR. BROWN: Okay. Your Honor, I have no further questions at this time. Thank you.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MS. DONAHUE:

Q. K.S.x, I'm going to ask you a question about the time when you talked to the man on the videotape.

A. Yes.

Q. Do you remember whether the man asked you if you knew the difference between telling the truth and telling a lie?

A. I don't remember.

Q. Would it help your memory if you listened to that part of the tape?

A. I don't want to listen anymore.

Q. I know that you don't want to listen --

THE COURT: I don't think that's helpful anyway, Ms. Donahue.

MS. DONAHUE: Okay. Okay.

Q. K.S.x, what color is the piece of paper that I'm holding?

A. I don't know what it's called.

Q. You don't know what this color is?

A. Ocean color.

Q. If I said this piece of paper is red, would that be the truth or would that be a lie?

A. Not true.

Q. K.S.x, is it true or not true that you were at Michael's house?

A. The truth.

1 Q. Are the things that you are remembering today the truth or
2 a lie?

3 THE INTERPRETER: I'm sorry, Counsel. Can you repeat
4 that question?

5 BY MS. DONAHUE:

6 Q. The things that you remember today as you sit here that you
7 have told us, is that the truth?

8 A. The truth.

9 MS. DONAHUE: I have no more questions.

10 THE COURT: Recross?

11 MR. BROWN: Your Honor, I have no further questions at
12 this time.

13 THE COURT: All right. Let's take a 15 minute break.
14 Ladies and gentlemen, don't talk about the case or form or
15 express any opinions about the case until it's finally submitted
16 to you.

17 (Recess taken)

18 (Jury Out)

19 THE COURT: Before we bring the witness in,
20 Mr. Lulejian, I don't know what you are doing over there with
21 your computer, but stop it. The jurors have complained that
22 you're pulling up things that is either distracting or they
23 don't want to see or whatever.

24 MR. LULEJIAN: I will stop immediately, Your Honor.

25 THE COURT: All right.

(Jury In)

S.R.xxx, Government's witness, was sworn

THE CLERK: Thank you. Thank you. If you would all please have a seat.

THE COURT: I don't know why we did that with you standing.

THE CLERK: Oh, I am sorry.

I am going to need you to state your first name and spell your first name for the record.

THE WITNESS: S.R.xxx.

THE INTERPRETER: S-R-x-x-x-x-x.

THE COURT: You may proceed.

MS. DONAHUE: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. DONAHUE:

Q. Good morning, S.R.xxx.

A. Yes.

Q. S.R.xxx, can you tell us how old you are?

A. Twelve.

Q. And are you celebrating your birthday tomorrow?

A. Yes.

Q. Are you going to be 12 years old tomorrow?

A. Yes.

Q. S.R.xxx, what country do you live in?

A. Khmer.

1 Q. Is Khmer Cambodia?
2 A. Yes.
3 Q. Have you lived in Cambodia your whole life?
4 A. Yes.
5 Q. Does your family live in Cambodia?
6 A. Yes.
7 Q. Who are the members of your family?
8 A. Who?
9 Q. Do you have brothers and sisters?
10 A. Two younger sibling and one older sister.
11 Q. How about your mom? Does she live in Cambodia, too?
12 A. Yes. My father and my mother.
13 Q. Does your mother have a job?
14 A. Yes.
15 Q. What is her job?
16 A. She grew mushrooms.
17 Q. How about your dad. Does he have a job?
18 A. Yes.
19 Q. What is his job?
20 A. With my mother.
21 Q. Is that also growing mushrooms?
22 A. Yes.
23 Q. Right now in Cambodia, do you live at the Agape Center?
24 A. Yes.
25 Q. At the Agape Center, S.R.xxx, do you go to school?

1 A. Yes.

2 Q. What grade are you in?

3 A. Third.

4 Q. What are you studying in third grade?

5 A. Cambodian, history, sociology, math. And English.

6 Q. Do you have a favorite subject to study?

7 A. Yes.

8 Q. What is that?

9 A. Sociology and Cambodian.

10 Q. What do you want to do when you grow up?

11 A. Secretary.

12 Q. S.R.xxx, I am going to show you some pictures.

13 A. Yes.

14 Q. The first picture, Exhibit 1078. That's on the screen.

15 Do you know what that is?

16 A. A house.

17 Q. Do you know whose house that is?

18 A. Michael's house.

19 Q. How do you know that?

20 A. I used to live there.

21 Q. Who did you used to live there with?

22 A. L.K.xxx, S.S.xxx, and myself.

23 Q. Is S.S.xxx your sister?

24 A. Yes.

25 Q. I want to show you a couple more pictures. The first one,

1 Government's Exhibit 1362.

2 S.R.xxx, who are the people in that picture?

3 A. My family.

4 MS. DONAHUE: Move 1362 into evidence.

5 MR. GUNN: No objection.

6 THE COURT: That will come in. Thank you.

7 (Government's Exhibit 1362 was received)

8 BY MS. DONAHUE:

9 Q. S.R.xxx, where was this picture taken?

10 A. Michael's house.

11 Q. Now I'm going to point on the screen and can you tell me
12 who each of these people are, starting with the man on left?

13 A. My father.

14 Q. Who is that?

15 A. Myself.

16 Q. Who is this?

17 A. My sister.

18 Q. Is that S.S.xxx?

19 A. Yes.

20 Q. Is S.S.xxx older than you?

21 A. Yes.

22 Q. How much older?

23 A. One.

24 Q. Is that one year?

25 A. Yes.

1 Q. Who is this?

2 A. My younger sibling.

3 Q. Who is this?

4 A. My mother.

5 Q. Do you know who took this picture?

6 A. Maybe Michael.

7 Q. I would like you to take a look at Government's
8 Exhibit 1363, another picture. Government's Exhibit 1363.

9 Who is that a picture of?

10 A. My mother.

11 MS. DONAHUE: Move 1363 into evidence.

12 MR. GUNN: I have no objection.

13 THE COURT: I was distracted for a moment. Just a
14 moment.

15 MS. DONAHUE: Oh, I'm sorry.

16 THE COURT: That's okay.

17 That's admitted.

18 (Government's Exhibit 1363 was received)

19 BY MS. DONAHUE:

20 Q. Where is that picture taken?

21 A. That's Michael's house.

22 Q. I would like you to take a look at another picture.
23 Government's Exhibit 1368.

24 Who is in that picture?

25 A. Myself and my sister.

MS. DONAHUE: Move 1368 into evidence.

THE COURT: Admitted.

(Government's Exhibit 1368 was received)

BY MS. DONAHUE:

Q. Where is that picture taken?

A. At Michael's house.

Q. Was that picture taken around Christmastime?

A. Yes.

Q. I would like you to take a look at another picture,
Government's Exhibit 1376.

Who is in that picture?

A. Myself, Sang, the husband, my mother, my father.

MS. DONAHUE: Move 1376 into evidence.

THE COURT: Admitted.

(Government's Exhibit 1376 was received)

BY MS. DONAHUE:

Q. When you say yourself, are you the girl in the blue hat?

A. Yes.

Q. And who is the woman right behind you in the blue jacket?

A. My mother.

Q. And who is the man behind your mother?

A. My father.

Q. Who is this woman in the pink shirt and white pants?

A. Sang.

Q. Is that Basang?

1 A. Yes.

2 Q. Who is the man in the white shirt next to her?

3 A. Her husband.

4 Q. When you say "her husband," you mean Basang's husband?

5 A. Yes.

6 Q. I just have a couple more pictures to show you.

7 Government's Exhibit 1392. 1391 and 1392 both.

8 Who is that a picture of?

9 A. Myself.

10 MS. DONAHUE: Move 1391 into evidence.

11 THE COURT: Admitted.

12 (Government's Exhibit 1391 was received)

13 BY MS. DONAHUE:

14 Q. Is that taken at Christmastime?

15 A. Yes.

16 Q. Do you know who took that picture?

17 A. Michael.

18 Q. Can you take a look at another photograph, Government's
19 Exhibit 1392.

20 Who is that a picture of?

21 A. My oldest sister.

22 MS. DONAHUE: Move 1392 into evidence.

23 THE COURT: Admitted.

24 (Government's Exhibit 1392 was received)

25 BY MS. DONAHUE:

1 Q. Is that S.S.xxx?

2 A. Yes.

3 Q. Was that picture taken at Michael's house?

4 A. Yes.

5 Q. One more picture, Government's Exhibit 1404. Can you take
6 a look at that picture. Who are the people -- I'm sorry. I
7 move 1404 into evidence. I apologize.

8 Who are the people in that picture?

9 A. Myself, my older sister, and my mother.

10 MS. DONAHUE: Move 1404 into evidence.

11 THE COURT: It will be admitted.

12 (Government's Exhibit 1404 was received)

13 MS. DONAHUE: I apologize.

14 THE COURT: Just so you know, we are going to have to
15 break around noon or so and we are going to break for the day
16 because, as I said, I have verdicts in my other case. That one
17 will take quite a while. So when you think it's a good time for
18 you to stop between 12:00, 12:10 or so, let me know.

19 MS. DONAHUE: Thank you, Your Honor.

20 Q. Looking at this photograph, Government's Exhibit 1404, is
21 that you in the white dress?

22 A. Yes.

23 Q. And your sister, S.S.xxx?

24 A. Yes.

25 Q. And your mom?

1 A. Yes.

2 Q. Who took this picture?

3 A. Maybe Michael.

4 Q. Were you and S.S.xxx living at Michael's house?

5 A. Yes.

6 Q. Was this picture taken at Michael's house?

7 A. Yes.

8 Q. S.R.xxx, did you like living at Michael's house?

9 A. At the beginning, yes. After a while, no.

10 Q. Why did you like it at the beginning?

11 A. I saw his house was nice.

12 Q. Had something happened to the house that you lived in with

13 your family before you moved to Michael's house?

14 A. Yes. My family's burned -- got burned.

15 Q. Got burned down?

16 A. Yes.

17 Q. How did you come to live at Michael's house?

18 A. At first my sister -- my in-law brought me there to visit.

19 Q. Who was your in-law?

20 A. Ngoc.

21 Q. What happened when you came to visit at Michael's house?

22 A. I went to visit there at first and I thought I saw the

23 house was nice and all that.

24 Q. Did you meet Michael?

25 A. Yes.

1 Q. Did he give you anything?

2 A. Yes.

3 Q. What did he give you that first time that you met him?

4 A. Money, soap, powder.

5 Q. Okay.

6 And then a couple of days later, did you move to
7 Michael's house?

8 A. Yes.

9 Q. Before you moved to Michael's house, did Basang and Ngoc
10 talk to your mother?

11 MR. GUNN: Objection, Your Honor, no foundation for
12 personal knowledge.

13 THE COURT: Lay some foundation, Ms. Donahue.

14 BY MS. DONAHUE:

15 Q. Before you moved to Michael's house, did you see Basang
16 talk to your mother?

17 A. Before I moved in?

18 Q. Yes.

19 A. Yes.

20 Q. Did your mother tell you that you could go to live at
21 Michael's house?

22 A. Yes.

23 Q. Did you want to go and live at Michael's house?

24 A. Yes.

25 Q. When -- were you going to school when your house burned

1 down?

2 A. Yes.

3 Q. Did you go to school all the time when you lived at home
4 with your mom?

5 A. Sometimes yes; sometimes no.

6 Q. Did your mom always have enough money to pay for school?

7 A. No.

8 Q. Did you go to Michael's house with your sister, S.S.xxx?

9 A. Yes.

10 Q. You said at first you liked it at Michael's house and later
11 you did not; is that right?

12 A. Yes.

13 Q. How come you did not like to live at Michael's house?

14 A. Because of what he was doing.

15 Q. Let's talk a little bit about that.

16 A. Yes.

17 Q. When you were at Michael's house, did you ever go into his
18 bedroom?

19 A. Yes.

20 Q. Did you take a look at a picture for me, Government's
21 Exhibit 1096.

22 S.R.xxx, do you know what that is a picture of?

23 A. Michael's bedroom.

24 Q. Were you ever in Michael's bedroom?

25 A. Yes.

1 Q. Were you in Michael's bedroom on more than one time?

2 A. Yes. Many.

3 Q. And on those many times that you were in his bedroom, what
4 did you do?

5 A. Sometimes massage; sometimes clean up his bedroom.

6 Q. When you say "massage," who would give the massage?

7 A. Myself, S.S.xxx, L.K.xxx.

8 Q. And would the three of you give a massage to Michael?

9 A. Yes.

10 Q. What did Michael wear when you gave him a massage?

11 A. No clothes at the time.

12 Q. How about you? What would you wear when you gave him a
13 massage?

14 A. No. No clothes.

15 Q. How come you were not wearing any clothes?

16 A. He told me to take it off.

17 Q. How did Michael tell you to take your clothes off?

18 A. Sometimes he would take them off me.

19 Q. How about L.K.xxx and S.S.xxx, what were they wearing when
20 they were giving Michael a massage?

21 A. Nothing also.

22 Q. When you gave Michael a massage, S.R.xxx, what would you
23 do?

24 A. Massage.

25 Q. Where would you rub him?

- 1 A. Everywhere.
- 2 Q. Did Basang show you how to do something?
- 3 A. Yes.
- 4 Q. What did she show you how to do?
- 5 A. To suck on him.
- 6 Q. Where would you suck on him?
- 7 A. Penis.
- 8 Q. Where would you put your hands when you were sucking on his
- 9 penis?
- 10 A. Next to his penis.
- 11 Q. After you sucked on his penis, did anything come out?
- 12 A. Yes.
- 13 Q. What came out?
- 14 A. Fluid.
- 15 Q. Where would that fluid go?
- 16 A. Sometimes in my mouth.
- 17 Q. What did it taste like?
- 18 A. Fishy.
- 19 Q. Did you swallow it?
- 20 A. No.
- 21 Q. What did you do?
- 22 A. I spit it out.
- 23 Q. Where did you spit it out?
- 24 A. His -- Michael's bathroom.
- 25 Q. What did you do after you spit it out?

1 A. I brushed my teeth.

2 Q. Did you see anyone else suck on his penis?

3 A. L.K.xxx, S.S.xxx.

4 Q. S.R.xxx, did Michael ever give you money?

5 A. Yes.

6 Q. When did he give you money?

7 A. After the massage.

8 Q. How much money would he give you?

9 A. \$1.

10 Q. S.R.xxx, did Michael ever put his penis inside of your

11 vagina?

12 A. No.

13 Q. Did Michael ever put his tongue on your body?

14 A. Yes.

15 Q. Where were you when he did that?

16 A. In his bedroom.

17 Q. What were you wearing?

18 A. Nothing.

19 Q. What did he do?

20 A. I sat on him and he licked me.

21 Q. When you say you sat on him, where -- what part of his body

22 did you sit on?

23 A. His mouth.

24 Q. How did that feel?

25 A. Painful and embarrassed.

1 Q. Did you tell him to stop?

2 A. No.

3 Q. Did you think that you could tell him to stop?

4 A. I don't know.

5 Q. S.R.xxx, did Michael ever give you any medicine?

6 A. Yes.

7 Q. What did he give you?

8 A. I don't know.

9 Q. Was it a pill?

10 A. I don't remember.

11 Q. Do you remember whether or not he ever gave you any
12 medicine?

13 A. Yes.

14 Q. How did you feel after he gave it to you?

15 A. Normal.

16 Q. Did he do anything after he gave you the medicine?

17 A. He put something in my anus.

18 Q. Do you know what it was?

19 A. No.

20 Q. Did it hurt?

21 A. I don't know. I don't remember anymore.

22 Q. S.R.xxx, let's talk a little bit about money. You said
23 that Michael gave you money after you sucked on his penis; is
24 that right?

25 A. Yes.

1 Q. What did you do with the money?

2 A. Save.

3 Q. Did you ever tell your mother that Michael was having you
4 suck on his penis?

5 A. No.

6 Q. How come?

7 A. I did not want to.

8 Q. How come you did not want to?

9 A. I wanted to save money so I can help my siblings to go to
10 school.

11 Q. S.R.xxx, do you remember when Michael was lying on his bed
12 and he had no clothes on, did you see any marks or bumps on his
13 body?

14 A. Yes.

15 Q. What did you see?

16 A. A mole.

17 Q. Where was that mole?

18 A. In his thigh.

19 Q. How big was it?

20 THE COURT: She is making a sign at the very end
21 almost of her pinkie.

22 BY MS. DONAHUE:

23 Q. S.R.xxx, what color was it?

24 A. Reddish.

25 Q. S.R.xxx, when you rubbed Michael's body, did he ask you to

1 put anything -- any cream or anything like that on it?

2 A. Yes.

3 Q. What did you rub on him?

4 A. Oil on his private.

5 Q. Did that oil come out of a bottle?

6 A. Yes.

7 Q. Did you remember what the bottle looked like?

8 A. Yes.

9 Q. What did it look like?

10 A. This size (indicating).

11 Q. You're holding up your hands about three inches apart and
12 maybe about -- about three inches apart. And what, about eight
13 inches tall?

14 THE COURT: That looks about right.

15 BY MS. DONAHUE:

16 Q. Okay. What color was it?

17 A. Pink.

18 Q. Can you take a look at a picture for me, Exhibit 1138.

19 Do you know what that is?

20 A. Yes.

21 Q. What is that?

22 A. Bottle.

23 Q. In that picture, where is that bottle in Michael's house?

24 A. The -- in the maid's room.

25 Q. Did you ever see that bottle in the maid's room?

1 A. Yes. I have.

2 Q. What did you see the maid doing with that bottle?

3 A. Coin herself.

4 Q. What does it mean to coin yourself?

5 A. Coin means when you sick, you coin it so you get better,
6 you get well.

7 Q. Do you take oil and rub it on a coin and then rub it on
8 your skin?

9 A. Yes.

10 Q. That's something that people in Cambodia do sometimes when
11 they're sick, isn't it?

12 A. Yes.

13 Q. Now, S.R.xxx, when you used that oil to rub it on Michael's
14 penis, where in the house was that bottle?

15 A. Next to his bed.

16 Q. When you say "his bed," do you mean Michael's bed?

17 A. Yes.

18 Q. S.R.xxx, can you look around the room and tell me if you
19 see Michael?

20 A. Yes.

21 Q. Can you point to him?

22 A. Yes.

23 Q. Could you point to him right now?

24 A. Yes. (Witness indicates). He is sitting right there.

25 Q. At this table, is he the man who is closest to me or the

1 man who is sitting in the middle or the man who is closest to
2 you?

3 A. My side.

4 THE COURT: Indicating the defendant, Mr. Pepe.

5 BY MS. DONAHUE:

6 Q. S.R.xxx, when you lived at Michael's house, did he call you
7 by your name, S.R.xxx?

8 A. He used to call me Smiley.

9 Q. Smiley was his name for you?

10 A. Yes.

11 Q. S.R.xxx, when you were at Michael's house, did he ever have
12 people come over to visit him?

13 A. Inviting somebody?

14 Q. Yes. Would he have people come over that he had invited?

15 A. I don't know.

16 Q. Did you ever see any people come over to visit Michael?

17 A. Sometimes I would see people who works with him come over.

18 Q. Where were you when those people came to the house?

19 A. I hide.

20 Q. Where did you hide?

21 A. My bedroom.

22 Q. Why did you hide in your bedroom?

23 A. Michael told me to.

24 Q. S.R.xxx, when you were at Michael's house, did you suck on
25 the penis of any man other than Michael?

1 A. No.

2 MS. DONAHUE: I have no further questions.

3 THE COURT: Would the defense like to wait until
4 tomorrow?

5 MR. GUNN: I'm sorry, Your Honor?

6 THE COURT: Would you like to wait until tomorrow?

7 MR. GUNN: That would probably make sense. I am going
8 to be more than ten minutes.

9 THE COURT: Ladies and gentlemen, as I indicated, I
10 have a verdict in my other case, but starting tomorrow, I will
11 be all yours. It will take quite some time. We will recess for
12 the day.

13 Don't talk about the case or form or express any
14 opinions about the case until it's finally submitted to you.
15 You are ordered to return tomorrow at 8:00 a.m. You are ordered
16 to have a good evening.

17 (Jury Out)

18 (Proceedings adjourned at 11:51 a.m.)

19 CERTIFICATE

20
21 I hereby certify that pursuant to Section 753, Title 18,
22 United States Code, the foregoing is a true and correct
23 transcript of the stenographically reported proceedings held in
24 the above-entitled matter and that the transcript page format is
in conformance with the regulations of the Judicial Conference
of the United States.

25 _____
Pamela A. Seijas, CSR No. 3593
Official Reporter

Date

Certificate of Service

I hereby certify that on May 28, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

By: /s/ James H. Locklin
JAMES H. LOCKLIN
Deputy Federal Public Defender

No. 14-50095

**In the United States Court of Appeals
for the Ninth Circuit**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MICHAEL JOSEPH PEPE,
Defendant-Appellant.

On Appeal from the United States District Court
for the Central District of California
The Honorable Dale S. Fischer, Presiding
No. CR-07-00168-DSF

Appellant's Excerpts of Record
[Volume 6 of 12]

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[†] Although this document and the two orders that follow were not filed until after the judgment and notice of appeal were filed, they are placed here in the excerpts because they relate to the trial proceedings.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE DALE S. FISCHER, JUDGE PRESIDING

United States of America,)
Plaintiff,)
vs.) Case No.
) CR 07-168 (A) -DSF
Michael Joseph Pepe,)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS

Day 6

Los Angeles, California

Friday, May 16, 2008

Pamela A. Seijas, CSR, FCRR
Official Reporter
Roybal Federal Building
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Room 181-I
Los Angeles, California 90012
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19 ALSO PRESENT: ATTACHE GARY PHILLIPS
20 ICE SPECIAL AGENT EDDY WANG
21

22 THE INTERPRETERS: CHANDARA HAC, VIETNAMESE
23 MORYVANN PAIGNE, CAMBODIAN
24
25

1 portions of the CD of the video interview, not so much to
2 impeach or refresh with the witness but to show demeanor and/or
3 the way questions were posed and asked. Not even for the truth
4 of the matter so much as showing a bias or problem with the
5 interview context. So I assume that will be permissible. And
6 we won't have to do the headphone thing since it will be offered
7 for the purpose of showing the jury how the demeanor and the
8 question and answer --

9 THE COURT: Well, if that's appropriate. I don't know
10 that it necessarily needs to be done with the witness present.

11 MR. GUNN: I believe it would be appropriate during
12 the cross-examination of the witness and she will be able -- I
13 will be asking her questions about whether she did such-and-such
14 and then I will say is the place where that happened or is this
15 the place where they asked this that way.

16 THE COURT: I guess I will wait and see.

17 MR. GUNN: All right, Your Honor.

18 (Jury In)

19 THE COURT: Good morning. Everyone is back. And the
20 witness is back on the stand. The interpreter is still under
21 oath.

22 Promise to tell the truth?

23 THE WITNESS: Yes.

24 THE COURT: Mr. Gunn.

25 MR. GUNN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. GUNN:

Q. S.R.xxx, my name is Carl Gunn and I'm one of Michael's attorneys, and I need to ask you some questions about your testimony yesterday. All right?

A. Yes.

Q. First of all, Michael did send you to school while you were living at his house; correct?

A. Yes.

Q. And he even had one of his teachers come over to give you tutoring in English, didn't he?

A. Yes.

Q. And that teacher came over three days a week; right?

A. Yes.

Q. And he tutored both you and the other girls who were living in the house, didn't he?

A. Yes.

Q. And there is another girl living at the house named Ngoc, wasn't there?

A. Yes.

Q. She was your sister-in-law?

A. Yes.

Q. And so she was your older brother's wife?

A. Yes.

Q. And which brother was that? What was that brother's name?

1 A. Ben.

2 Q. Ben?

3 A. Yes.

4 Q. Ben was born on June 9th, 1987; is that right?

5 A. I don't know.

6 Q. Would it refresh your memory if you saw a copy of your
7 family book?

8 MS. DONAHUE: Objection. No failure of recollection.

9 THE COURT: Sustained. She said she didn't know, not
10 she didn't remember.

11 BY MR. GUNN:

12 Q. Is it that you never have known how old he is or that you
13 don't remember now how old he is?

14 THE COURT: You didn't ask how old he was. You asked
15 what date he was born.

16 MR. GUNN: All right.

17 Q. Let me rephrase my question then, S.R.xxx. The judge made
18 a good point.

19 How old is Ben? Do you remember how old Ben is?

20 A. I don't know.

21 Q. Is it that you never knew or you don't know or you just
22 don't remember right now?

23 A. I never knew.

24 Q. Did you also have an older brother or relative who worked
25 at the house as a gate guard when you first came?

1 A. No.

2 Q. You said no?

3 A. Correct.

4 Q. Your mother came over to visit at the house, didn't she,
5 sometimes?

6 A. Yes.

7 Q. And, in fact, she came over quite a lot, didn't she?

8 A. I don't know.

9 Q. You don't know if she came over a lot?

10 A. I think, yes, it's possible that she came often.

11 Q. And you went home to your parents' house on most weekends,
12 didn't you?

13 A. Yes.

14 Q. And no one forced you to stay at the house; right?

15 A. What do you mean "forced"?

16 Q. Well, no one kept you from going home to your mother's
17 house for weekends, for example; right?

18 A. No.

19 Q. And no one forced you to go back at the end of the
20 weekends, did they?

21 A. No.

22 Q. You never told your mother, "I don't want to go back to the
23 house," did you?

24 A. No.

25 Q. You testified about this mole that you claim Michael has on

1 his thigh; is that right?

2 A. Yes.

3 Q. You said it was red?

4 A. Reddish pink.

5 MR. GUNN: Your Honor, I would like an exhibit placed
6 in front of the witness. It will be Defense Exhibit 302.

7 THE COURT: All right.

8 MR. GUNN: If it could be kept down until I ask her
9 about it.

10 THE COURT: Well, ask her about it and then we will
11 place it in front of her then.

12 MR. GUNN: That's fine.

13 Q. S.R.xxx, I need to show you a photograph that may embarrass
14 you but I need to ask you a couple of questions about it. Okay?

15 A. Yes.

16 Q. If we can have it placed in front of S.R.xxx, Your Honor.
17 It would be 302, Defense.

18 S.R.xxx, that's a photo of part of a man's body, isn't
19 it?

20 A. Yes.

21 Q. And it shows his inner legs; right?

22 A. Inner legs?

23 Q. His thighs, right? The inside of his legs?

24 A. Yes. I can see his thigh but not everything.

25 Q. And on the inside of one of the thighs is a red mark;

1 right?

2 A. Yes.

3 Q. Have you seen that mark before?

4 A. I don't recall.

5 Q. Is that the mark you're talking about on Michael's leg or
6 is it not the mark you're talking about on Michael's leg?

7 A. I was talking about the mole.

8 Q. And is that the mole you're -- is that the mole you're
9 talking about on Michael's leg or is it not the mole you're
10 talking about on Michael's leg?

11 A. That's not it.

12 Q. You testified -- let me step back. You talked about that
13 mole that you say you saw in an interview with Agent Phillips,
14 this man Gary here at the table; right?

15 A. Yes.

16 Q. I want to talk a little bit about how that came up in the
17 interview. He started off asking you just a general question --
18 actually, let me rephrase that question.

19 He started off just asking you what Michael looks
20 like; right?

21 A. Yes.

22 Q. And you replied -- what you said first was -- the first
23 thing you said was Michael was fat; right?

24 A. Correct.

25 Q. And then he asked you just another general question, "Okay,

1 what else?"; right?

2 A. What else?

3 Q. He said -- you said Michael was fat; right?

4 A. Yes.

5 Q. And then he said "Okay, what else?"; right? Or something
6 like that.

7 A. What else? I don't understand.

8 Q. Would you recognize the part of the interview where you
9 talked about the mole if I played that part of the video for
10 you?

11 A. I don't know.

12 Q. Well, if you saw a video of you talking to Mr. Phillips and
13 talking about the mole, you'd be able to tell us that that was
14 you; right?

15 A. You mean if I can remember that I said that?

16 Q. No. No. Right now I'm just asking if we played a video of
17 that interview for you and you watched it, you'd be able to
18 recognize whether it was you and recognize that it was
19 Agent Phillips; right?

20 THE COURT: I'm not sure how she knows what she would
21 know, Mr. Gunn. That doesn't make sense.

22 MR. GUNN: Your Honor, may I play part of the video?

23 THE COURT: Discuss it with Ms. Donahue.

24 MS. DONAHUE: Objection. There is no failure of
25 recollection. It's not hearsay. It's not impeachment.

1 MR. GUNN: I am not offering it to impeach or for
2 hearsay, Your Honor, I'm offering it to show --

3 THE COURT: Sidebar.

4 (Sidebar conference commenced)

5 MR. GUNN: Your Honor, what I want to play this part
6 of the video for is what happens is Gary Phillips asks her,
7 "What does Michael look like?" General question. She says,
8 "He's fat." Then Gary Phillips says, "Okay. What else?" She
9 says, "Oh, and he has a mole." And I think that is not -- it's
10 really not even offered for the truth so much. We're probably
11 going to say it's not true.

12 It's offered to show -- we are going to argue she was
13 basically programmed to volunteer or say there was a mole.
14 Because that's not the first thing someone would normally say
15 is --

16 THE COURT: It sounds like the first thing I would
17 say.

18 MS. DONAHUE: Me, too.

19 MR. GUNN: Well, I guess that's for argument,
20 Your Honor. I just want to play it so the jury sees it and then
21 we can argue it --

22 THE COURT: You know, why take any chances?

23 MS. DONAHUE: Yes.

24 THE COURT: Go ahead.

25 (Sidebar conference ended)

1 MR. GUNN: Your Honor, I have -- I have, Your Honor,
2 what with the Court's permission we will identify as 134, and
3 it's already in my computer. If we could go to -- it would be
4 CD 1 on our CD, the first section of the interview. It would be
5 minute -- minute 22:43 through 23:45.

6 Q. S.R.xxx, I am going to play part of this video for you and
7 I would like you to watch it and listen to it. It will be on
8 the screen beside you.

9 Minute 22, second 43, through minute 23, second 45.

10 MR. GUNN: And if Mr. Brown could blow up the picture.

11 (Whereupon, video was played for the witness)

12 BY MR. GUNN:

13 Q. Did you see that, S.R.xxx?

14 A. Yes.

15 Q. That was you answering Agent Phillips' questions, right?

16 A. Yes.

17 Q. And he asked you what Michael looked like; right?

18 A. Yes.

19 Q. The first thing you said was he was fat.

20 A. Yes.

21 Q. And then he just asked you generally what else? Right?

22 MS. DONAHUE: Objection. It speaks for itself. I
23 don't know why we are asking her what happened on the tape.

24 THE COURT: Overruled.

25 MR. GUNN: Do you want me to reask it?

1 THE INTERPRETER: Yes.

2 BY MR. GUNN:

3 Q. He asked you generally what else after you said fat; right?

4 A. Correct.

5 Q. And you immediately said, "Oh, and then there is a mole";
6 right?

7 A. Yes. Correct.

8 Q. Someone had told you it was important to say Michael had a
9 mole, hadn't they?

10 A. No.

11 Q. You at first said it was -- you at first when asked where
12 it was pointed over here; correct?

13 Can I step out, Your Honor, so she can see me.

14 THE COURT: And describe for the record what you are
15 doing.

16 MR. GUNN: Yes, I was going to do that. I will let
17 her answer first, though, Your Honor.

18 Q. S.R.xxx, when you first were asked where it was, you first
19 pointed over here; right? On the video? That's where you first
20 pointed, right, on the video?

21 A. I was pointing towards -- I meant to say that side. That's
22 what I meant to say. Not exactly where that mole is. On that
23 side, the legs.

24 Q. What you first did though was you patted here; right?

25 A. Yes.

1 MR. GUNN: For the record, Your Honor, I am patting
2 the outside of my left thigh.

3 THE COURT: Yes.

4 BY MR. GUNN:

5 Q. And then when the agent started pointing here or there or
6 there, that's when you moved around and pointed to the inner
7 thigh; right?

8 THE INTERPRETER: Can you repeat that last question,
9 Counsel?

10 BY MR. GUNN:

11 Q. When the agent sort of said here or here or there and then
12 here and he pointed to the inner thigh, you then said it was on
13 the inner thigh, right, and pointed there?

14 A. It's in the inside. It's on the inside.

15 Q. That wasn't where you first pointed, though; right?

16 A. Correct. I did not.

17 Q. You didn't point to the inside until Gary Phillips
18 suggested that as a possibility; right?

19 A. What do you mean?

20 Q. Well, what I mean is you didn't point -- you pointed to the
21 inside of the thigh after Gary Phillips pointed to that as a
22 possibility on the video; right?

23 A. He did not show me.

24 Q. By the way, you couldn't tell anyone anything about any
25 other moles on Michael's body, could you?

1 A. I don't know. I don't remember.

2 Q. Well, you actually told the agent, Agent Phillips, that
3 Michael didn't have any other moles on his body that you
4 remembered; isn't that true?

5 A. Can you ask the question again?

6 Q. Sure. When Agent Phillips asked you questions in that same
7 interview, one of the things he asked about was whether Michael
8 had any other moles anywhere else on his body; right?

9 A. Can you explain that again?

10 Q. Gary Phillips asked you questions at this interview, right?
11 This meeting? And one of the questions he asked you was whether
12 Michael had moles on any other part of his body; right?

13 A. You mean he asked me that?

14 Q. Yes. Right? Is that right? Do you remember that?

15 A. I don't recall that he asked me that.

16 Q. Would it help you remember if you heard part of the
17 interview on headphones?

18 A. Okay.

19 MR. GUNN: Your Honor, this would be more for
20 refreshing so if we could use the headphones and play, it would
21 be the first section of the interview, what I would call CD 1.
22 And it would be from minute 22:43 -- I'm sorry. It would be
23 from minute 30, second 40, through minute 30, second 54, and if
24 Agent Wang could watch it and stop it when we get to that
25 stopping point. It's on the transcript at 15.

1 AGENT WANG: 30:40?

2 MR. GUNN: Start at 30:40 and go through 30:54.

3 (Whereupon video was played for the witness).

4 BY MR. GUNN:

5 Q. Does that help you remember if Agent Phillips asked you if
6 Michael had moles anywhere else on his body?

7 A. Yes.

8 Q. And you said you couldn't remember any; right?

9 A. Yes.

10 Q. During the interview, the agent and the interpreter
11 encouraged you to say things that would help, didn't they?

12 A. What do you mean?

13 Q. Well, for example --

14 A. Okay.

15 Q. -- there was a place where the agent was trying to get you
16 to say Michael's eyes were a lighter blue; right?

17 A. No. He did not encourage.

18 Q. There was a place where he told you not to be afraid and
19 for you to tell him things, and you said you wanted to tell
20 other great answers; isn't that true?

21 THE INTERPRETER: I am sorry, Counsel --

22 MR. GUNN: That's a bad question.

23 Your Honor, I think I would ask to play a part of the
24 interview, not for the truth but for the circumstances of the
25 interview and the influence of the interview again. That would

1 be a portion of CD 1, Defense Exhibit 134, 41:30 to 42:06. Then
2 I would ask the witness questions about it. That's probably an
3 easier way to do it and I think it's admissible --

4 THE COURT: Okay. Stop talking.

5 MR. GUNN: Sorry.

6 THE COURT: Ms. Donahue?

7 MR. GUNN: It would be transcript at 20, 21.

8 MS. DONAHUE: What are the time markers?

9 MR. GUNN: 41:30 through 42:06. Transcript
10 pages 20 -- bottom of 20 to the top 21.

11 MS. DONAHUE: No objection.

12 THE COURT: All right.

13 MR. GUNN: If I could have Mr. Brown go to that
14 marker, 41:30 through 42:06.

15 Q. S.R.xxx, I would like you to look at this video again and
16 watch it.

17 (Whereupon, video was played for the witness).

18 BY MR. GUNN:

19 Q. That was the agent telling you not to be afraid and to tell
20 him the story because other kids told him similar stories;
21 right?

22 A. Yes.

23 Q. And you telling him you want to give other great answers;
24 right?

25 A. What do you mean "other great answers?"

1 Q. Well, that's what you said you wanted to do; right?

2 A. Can you replay the tape again?

3 Q. If you'd like, yes. Again the counters are 41:30 through
4 42:06.

5 (Whereupon, video was played for the witness).

6 THE WITNESS: I said I told the other gentleman all of
7 it already. Like I meant the police and all that.

8 BY MR. GUNN:

9 Q. The agent and the interpreter also were trying to -- told
10 you to try to remember other things; right? Try to remember
11 things; right?

12 A. I don't recall.

13 MR. GUNN: Your Honor, I would ask to play, for some
14 of the reasons, 43:35 through 45:35 on the same CD. It's
15 transcript page 22, I believe.

16 MS. DONAHUE: No -- no objection.

17 THE COURT: Okay. Thank you.

18 (Whereupon, video was played for the witness).

19 BY MR. GUNN:

20 Q. There at the end the interpreter is saying to you in
21 Cambodian: "Is there anything else? Try to remember," isn't
22 he?

23 THE INTERPRETER: What's your question, Counsel?

24 BY MR. GUNN:

25 Q. There at the end of that section, the interpreter is saying

1 to you in Cambodian, "Is there anything else? Try to remember,"
2 isn't he?

3 A. Yes.

4 Q. And you say, "That's all," but he says, "Try to remember,
5 are there pictures, what kind of pictures, downstairs are there
6 pictures"; right?

7 A. What do you mean "pictures downstairs"?

8 Q. He said to you, "Is there anything else, try to remember";
9 right?

10 A. Yes.

11 Q. And then you said "that's all"; right?

12 A. Yes.

13 Q. But he didn't stop. He said, "Try to remember whether
14 there are pictures"; right?

15 A. (No response).

16 Q. Let me ask the question another way.

17 He was trying to tell you to remember things even
18 after you told him that's all; right?

19 A. Ask me?

20 THE COURT: Can we get a stipulation that that is what
21 the person said? I don't see the point of this.

22 MS. DONAHUE: Provided we can get a stipulation for
23 the next two, lines, too, so it's appropriately in context.

24 MR. GUNN: That's fine, Your Honor.

25 THE COURT: All right.

1 MR. GUNN: I will just read exactly what it would be,
2 Your Honor. It's stipulated that the transcript reads:

3 "Male interpreter: Is there anything else? Try to
4 remember?" This in Cambodian.

5 "RS: That's all." That's also in Cambodia.

6 "Male interpreter: That's all?" In English. And
7 then in Cambodian, "Try to remember. Are there pictures? What
8 kind of pictures? Downstairs are there picture?

9 And then RS, in Cambodian, "Downstairs there are
10 pictures."

11 Then male interpreter, in English, "Photos."

12 And then if we read the next four lines:

13 RS in Cambodian, "It has cabinets."

14 Male interpreter in English, "And the photo inside the
15 cabinet."

16 THE COURT: Okay.

17 MS. DONAHUE: Just for the record, "RS" refers to
18 S.R.xxx.

19 THE COURT: Right.

20 MR. GUNN: Correct.

21 Q. By the way, S.R.xxx, you at first said no when the agent
22 asked if this interview could be videotaped, didn't you?

23 A. Yes.

24 Q. You didn't really want it videotaped, did you?

25 A. No.

1 Q. You only let them videotape it when they told you it was
2 only for them and no one else would see it; right?

3 A. I don't remember.

4 Q. Now, you knew this interview that you had with
5 Mr. Phillips, Gary, was about Michael having supposedly sexually
6 abused you; right?

7 A. Yes.

8 Q. And I assume you're saying that's something that upset you,
9 that you were unhappy about? Am I right?

10 A. During the interview?

11 Q. Well, I'm not talking about during the interview, at least
12 yet.

13 THE COURT: Your question was poorly phrased. Please
14 rephrase your question.

15 MR. GUNN: All right, Your Honor. I sometimes do
16 that.

17 THE COURT: It's not clear what you're asking upset
18 her, the interview or --

19 MR. GUNN: Right.

20 Q. I am just asking about the sexual abuse you said Michael
21 did.

22 This may be obvious, but did that make you happy or
23 unhappy?

24 A. No.

25 Q. Do you mean it made you unhappy?

1 A. No. I wasn't happy.

2 Q. And you were unhappy instead; is that right?

3 A. Correct.

4 Q. You're saying you were upset by it?

5 A. Upset. What do you mean upset by who?

6 Q. You felt like it was a bad thing that had happened to you;
7 is that right?

8 MS. DONAHUE: Objection. Vague.

9 THE COURT: Overruled.

10 THE WITNESS: Correct.

11 BY MR. GUNN:

12 Q. And you knew this interview was about that bad thing;
13 right?

14 A. I -- I did not know what the interview was about, but
15 whatever they ask, I respond.

16 Q. Well, S.R.xxx, you knew that the interview was supposed to
17 be about whether Michael did something to you and what you did.
18 You knew that; right?

19 A. The interview about Michael, yes, I did know.

20 Q. And you knew it was about what Michael supposedly did to
21 you; right?

22 A. Yes.

23 Q. But you didn't act unhappy during the interview, did you?

24 A. How did you -- what did you mean? My mother is on the
25 other side.

1 Q. At the very beginning of the interview, you told a joke
2 about a doctor you had seen saying you had a broken leg, didn't
3 you?

4 A. What do you mean a doctor?

5 MR. GUNN: Your Honor, could I play CD 1 of minute
6 zero, second 43, through minute 1, second 20?

7 MS. DONAHUE: No objection.

8 THE COURT: Thank you.

9 MR. GUNN: It will be transcript No. 1 at Page 1,
10 Your Honor.

11 I would like you to again listen and watch, S.R.xxx.

12 (Whereupon, video was played for the witness).

13 BY MR. GUNN:

14 Q. That was you telling a joke to them about the doctor saying
15 you had a broken leg; right?

16 A. I don't recall that, what I had -- what happened.

17 Q. Well, that was you talking on the video; right?

18 A. Yes. That was my picture, but right now I don't remember
19 whether my leg was broken or not.

20 Q. Well, you told them at the end there that you were just
21 kidding; right?

22 A. Yes.

23 Q. And are you telling us you don't remember whether your leg
24 was broken? You would remember that, wouldn't you?

25 A. No.

1 Q. Later on -- a little later in this interview, you told the
2 agent a riddle or puzzle, didn't you?

3 A. Can you ask the question again, please.

4 MR. GUNN: Actually, Your Honor, if I could play CD 1,
5 1702 through 1802.

6 MS. DONAHUE: The witness asked him to ask the
7 question again. Maybe he could pose his question again.

8 MR. GUNN: I'll do that, Your Honor. I still have my
9 request but I will ask the question.

10 THE COURT: No comments, just ask the question.

11 MR. GUNN: I'm sorry.

12 Q. A little later in the same interview, you told the agents
13 and the interpreter a riddle; right?

14 THE INTERPRETER: I'm sorry?

15 MR. GUNN: A riddle.

16 THE WITNESS: Okay. Can you repeat? What do you mean
17 by that?

18 BY MR. GUNN:

19 Q. You told the agents, "I give you a riddle, three got stuck,
20 one go forward, one back up."

21 What is that? Sort of a puzzle?

22 A. I go forward, backward. What do you mean?

23 Q. Would it help you remember if I showed you a videotape of
24 that part of the interview?

25 A. Yes.

1 MR. GUNN: Your Honor, could I play it? And I would
2 like to play it in open court because I think it is admissible
3 for other reasons such as discussed at sidebar --

4 THE COURT: Stop talking Mr. Gunn so I can hear from
5 Ms. Donahue.

6 MR. GUNN: I was just going to . . .

7 MS. DONAHUE: The Government does not object; however,
8 it should be played in context, which means it should be started
9 before --

10 THE COURT: Tell Mr. Gunn where you want to start it
11 and where you want to finish it.

12 MS. DONAHUE: It should start at 15:54 and go --

13 MR. GUNN: To 18:02?

14 MS. DONAHUE: Yes.

15 MR. GUNN: That would be fine, Your Honor.

16 Q. I would like you to listen carefully, S.R.xxx. Try to
17 listen for the whole time because I am going to ask you the
18 question again after you listen.

19 (Whereupon, video was played for the witness).

20 MR. GUNN: I just want to ask her to listen. This is
21 the part I wanted to ask about, S.R.xxx, the part that is coming
22 up. Now I would like you to listen very carefully to this part
23 especially. Okay?

24 (Whereupon, video was played for the witness).

25 BY MR. GUNN:

1 Q. That was you telling the agent and the interpreter a
2 riddle; right?

3 A. Yes.

4 Q. And you were laughing there at the end, weren't you?

5 A. Yes.

6 Q. In fact, there was a time even when you were talking about
7 the abuse you claim Michael had done where you laughed or
8 giggled? Wasn't there such a time?

9 A. Yes.

10 MR. GUNN: Your Honor, I would ask to play another
11 portion. It would be CD 2, from 57:55 through 59:16. It's the
12 transcript at Page 30, second transcript. Unless the Government
13 wants me to add more at the beginning or at the end.

14 MS. DONAHUE: What are the times?

15 MR. GUNN: 57:55 through 59:16, Page 30 of the
16 transcripts. Second transcript.

17 MS. DONAHUE: No objection.

18 THE COURT: All right. Thank you.

19 MR. GUNN: That would be, Your Honor, CD 2 on Defense
20 Exhibit 134, counter minute 57:55 through counter minute 59,
21 second 16.

22 THE COURT: Thank you.

23 (Whereupon, video was played for the witness).

24 BY MR. GUNN:

25 Q. That was talking about what you claimed about Michael tying

1 your sister up and him licking her vagina; right?

2 A. Yes.

3 Q. And you were laughing and you were giggling, weren't you?

4 A. You understand, I was so embarrassed, I didn't want to
5 speak.

6 Q. You were laughing and giggling, weren't you?

7 A. Yes. I did.

8 Q. About this terrible thing you said happened?

9 A. Terrible things happened.

10 Q. Now, at the beginning of that last segment there was talk
11 about being tied up with a cloth rope or tying up with a cloth
12 rope; right?

13 A. Yes.

14 Q. There was a cloth rope in the house that was sort of some
15 torn up sheets that were tied together or something like that?

16 A. Yes.

17 Q. You and the other girls played with that rope tying each
18 other up; right?

19 A. Yes.

20 MR. GUNN: Your Honor, I would like to have the
21 witness look at some photos now. It will be perhaps not all but
22 many in the 300 set, so maybe we could just put all those up
23 there in front of her and they will be there readily as I go
24 through. I believe most, if not all, are marked -- are in
25 evidence or marked.

1 THE COURT: You can just show them on the screen.

2 MR. GUNN: That's fine, Your Honor. I would like you
3 to -- actually I would like to show more than one at a time to
4 the witness and so it would probably be better to have them in
5 front of her and then I will put them on the screen and ask
6 her --

7 THE CLERK: Do you have the specific numbers?

8 MR. GUNN: 340, 345, 350, 360, 361 and 362, 365, 366,
9 368, 369, and 320.

10 THE COURT: Does the Government have all those?

11 MS. DONAHUE: Yes, Your Honor. No objection.

12 THE COURT: Any of those that isn't already in
13 evidence is now admitted.

14 THE CLERK: And 320, Counsel?

15 MR. GUNN: Yes.

16 THE CLERK: I believe all the requested exhibits are
17 before the witness.

18 BY MR. GUNN:

19 Q. If the interpreter could first place 340 and 345 before
20 S.R.xxx. The exhibit tags should be on the back.

21 S.R.xxx, I would like you to look at those -- those
22 are two sets of photographs; right?

23 A. Yes.

24 Q. They're pictures of you and others in the house eating a
25 meal; right?

1 A. Yes.

2 Q. And I would like you to look at the second picture in 345
3 as an example. That's it; correct?

4 THE INTERPRETER: Sorry, Counsel, what is your
5 question?

6 BY MR. GUNN:

7 Q. The second photograph in 345. Is that -- where I am
8 pointing my pen on the screen -- is that you?

9 A. No.

10 Q. Who's that?

11 A. My sister.

12 Q. That's your sister; right?

13 A. Yes.

14 Q. And she is smiling in that picture; right?

15 A. Yes.

16 Q. And you're also in some of the pictures in these two
17 exhibits; right?

18 A. I don't know.

19 Q. Well, would you look through them and tell us.

20 THE COURT: I am not going to have the witness search
21 through exhibits. If you want to ask her a question, ask her a
22 question.

23 MR. GUNN: I thought -- I was having trouble -- I will
24 move on to the next exhibit, Your Honor.

25 Q. Would you look at Defense Exhibit 350. If the interpreter

1 can place that in front of her.

2 That's a set of several pictures of you and L.K.xxx
3 and S.S.xxx in your school uniforms; correct?

4 A. Yes.

5 Q. Are you one of the girls in this picture which I am putting
6 on the screen, which for the record, Your Honor, is the first
7 one in Exhibit 350?

8 THE COURT: Thank you.

9 THE WITNESS: Yes.

10 BY MR. GUNN:

11 Q. Which one is you?

12 THE INTERPRETER: Pointing to the one standing.

13 BY MR. GUNN:

14 Q. The one where I am pointing my pen right now?

15 A. Correct.

16 Q. And you're smiling and laughing in that picture; right?

17 A. Yes.

18 Q. What about this picture? That's one of the later ones in
19 that set. Which one is you in this picture?

20 THE INTERPRETER: The witness is pointing to the
21 one --

22 BY MR. GUNN:

23 Q. Is this you?

24 A. Yes.

25 Q. So you're playing around with this other girl there; right?

1 A. Yes. I was with my sister.

2 Q. And then the other photographs also show you playing around
3 with the other girls and your sister; right?

4 A. Yes.

5 Q. Would you now look at -- if the interpreter could get
6 Defense Exhibits 360 through 362, Your Honor?

7 THE COURT: Okay.

8 BY MR. GUNN:

9 Q. Do you see those three pictures, S.R.xxx?

10 A. Yes.

11 Q. Those are also pictures of you with the other girls at the
12 house; right?

13 A. Yes.

14 Q. This is the first one or one of them; right?

15 A. Yes.

16 Q. Which one is you in that picture?

17 A. I was wearing yellow shirt and a red pants.

18 Q. Are you -- are you then the one I am pointing my pen at?

19 A. Correct.

20 Q. You're smiling there; right?

21 A. Yes.

22 Q. This is one of the other pictures; right? This was taken
23 around the same time and the same place and the same group;
24 right?

25 A. Yes.

1 Q. And is that you sticking out your tongue there?

2 A. Yes.

3 Q. Why are you sticking out your tongue?

4 A. I was playing.

5 Q. Michael was the one taking that picture?

6 A. I don't know.

7 Q. Did anyone else take pictures of you at the house besides
8 Michael?

9 A. I don't know.

10 Q. Well, let me ask you this: Did you see anyone else taking
11 pictures of you at the house besides Michael?

12 A. I don't know.

13 Q. Was there anyone else living at the house who might have
14 taken pictures of you or who could have taken pictures of you?

15 A. Who? Who do you mean?

16 Q. You said you don't know if Michael took that picture. I
17 guess what I'm asking is whether there were any other people at
18 the house who could have taken that picture or who could take
19 pictures?

20 A. I don't know.

21 MR. GUNN: Your Honor, could I have the interpreter
22 get 365 and 366 in front of S.R.xxx.

23 THE COURT: Yes.

24 BY MR. GUNN:

25 Q. These two photographs are photographs of you and the other

1 girls standing down on the patio in your school uniforms along
2 with, I guess, L.K.xxx's mom and little brother; right?

3 A. What -- what yard?

4 Q. It's in the yard at the house; right? Michael's house?

5 A. Yes.

6 Q. And this is one of those photographs; right? You're in
7 both these photographs first of all; right?

8 A. My picture on both of them?

9 Q. You're in both these pictures; right?

10 A. Yes.

11 Q. Including this one on the screen? This is one of them;
12 right?

13 A. Yes.

14 Q. And do I have it right that that's you there?

15 A. That's not right. I have the -- like a headband on.

16 Q. That's you there. Okay.

17 And you were taking a picture with the other girls in
18 your school uniforms; right?

19 A. Yes.

20 MR. GUNN: And if we could now have 368 and 369 placed
21 before S.R.xxx.

22 THE INTERPRETER: I don't have 369.

23 THE COURT: I am not sure you ever handed up 369.

24 MR. GUNN: I thought they were -- oh, from
25 Mr. Pierson. That's possible. If I missed it, I apologize. I

1 think they are in evidence, 368 and 369. I thought they were
2 used with I.T..

3 THE COURT: I don't think so.

4 THE INTERPRETER: I am sorry. It was numbered in the
5 front instead of the back.

6 MR. GUNN: Oh, that's my mistake. Actually it's
7 Mr. Brown's mistake.

8 BY MR. GUNN:

9 Q. Do you see those two pictures, S.R.xxx?

10 A. Yes.

11 Q. You're in both those pictures?

12 A. Yes.

13 Q. And who are the other two people in the pictures?

14 A. S.S.xxx and I.T..

15 Q. And this was in either -- this was around in April, wasn't
16 it? The second part of April?

17 A. I don't remember.

18 Q. That's one of the pictures; right?

19 A. Yes.

20 Q. And which one of -- is you in that picture?

21 A. Red shirt and blue pant.

22 Q. Right here?

23 A. Yes.

24 Q. And you're playing around and smiling with the other two
25 girls; right?

1 A. Yes.

2 Q. You were happy in that picture?

3 THE INTERPRETER: I am sorry, Counsel?

4 BY MR. GUNN:

5 Q. You were happy in that picture?

6 A. I don't know.

7 Q. What about the next picture, 269. That's the next picture,
8 right? In that picture the three of you were playing and
9 dancing sort of; right?

10 A. I don't know.

11 Q. What do you think you're doing?

12 A. I think I was playing.

13 Q. So you were happy in that picture; right?

14 A. In that picture?

15 Q. Yes.

16 A. Maybe I was.

17 Q. Now, I think on direct examination, when Patty Donahue here
18 was asking you questions, you said -- you admitted you were
19 happy at first, but then you started being unhappy later on.

20 Is that what you said?

21 A. Yes.

22 Q. Would you look at Defense Exhibit 320. It's a set of
23 pictures, probably one of the thicker ones with the birthday
24 cake picture on top.

25 That's a set of pictures --

1 THE COURT: I don't think you're looking at it.
2 You're talking about the stack of pictures?

3 MR. GUNN: Yes. It's the thicker set. It has the
4 mother presenting a birthday cake on top.

5 THE COURT: That's it. Thank you.

6 BY MR. GUNN:

7 Q. S.R.xxx, I would like you to look through those pictures.

8 THE COURT: Do you have more than a minute or two,
9 Mr. Gunn? We are going to take a break.

10 MR. GUNN: Yes, more than one or two.

11 THE COURT: Ladies and gentlemen, don't talk about the
12 case or form or express any opinions about the case until it's
13 finally submitted to you. We will take a 15 minute break.

14 (Recess taken)

15 (Jury In)

16 THE COURT: Everyone is present. The witness is back
17 on the stand. The interpreter is still under oath.

18 Remember, you promised to tell the truth.

19 THE WITNESS: Yes.

20 THE COURT: You may continue, Mr. Gunn.

21 BY MR. GUNN:

22 Q. S.R.xxx, if I recall correctly, you testified on direct --
23 let me rephrase that.

24 If I recall correctly, when Patty Donahue was asking
25 you questions, you said you were happy part of the time you were

1 at the house earlier on but not happy later.

2 Do I remember that correctly about what you said?

3 A. Yes.

4 Q. And do you have that Defense Exhibit 320 that I asked you
5 to look through just before we broke? Just before we stopped?

6 THE INTERPRETER: Counsel, would you like me to show
7 all these pictures to her?

8 MR. GUNN: Yes. If she would look through the set of
9 exhibits if she hasn't already.

10 THE INTERPRETER: Yes.

11 BY MR. GUNN:

12 Q. This Defense Exhibit 320 is a set of photographs from
13 L.K.xxx's birthday party; right?

14 A. Yes.

15 Q. And this is -- you were there; right?

16 A. Yes.

17 Q. You're in some of the photographs; right?

18 A. Yes.

19 Q. In fact, you're in most of them; right?

20 A. I don't know.

21 Q. Well, you -- all right.

22 This is one of the photographs; right?

23 A. Yes.

24 Q. And you're in that photograph; right?

25 A. Yes.

1 Q. And which one is you?

2 A. I'm in the orange dress.

3 Q. Sitting down?

4 A. Yes.

5 Q. Is that your mother behind you?

6 A. No.

7 Q. Who is that behind you?

8 A. The maid.

9 Q. And all of you are playing around putting cake on each
10 other's faces; right?

11 A. Yes.

12 Q. And you were happy there; right?

13 A. I don't know.

14 Q. You don't know whether you were happy there?

15 A. I don't know.

16 Q. Do you remember the birthday party?

17 A. What am I supposed to remember?

18 Q. Well, starting off, do you remember being at L.K.xxx's
19 birthday party at Michael's house?

20 A. I remember that you showed me the picture right now.

21 Q. I know. That wasn't quite my question. Why don't you put
22 the pictures aside for a second.

23 Do you remember being at a birthday party for L.K.xxx
24 at the house? You do remember, don't you, S.R.xxx --

25 THE COURT: One question at a time, Mr. Gunn.

1 THE WITNESS: Do you mean if I remember if I was happy
2 or not?

3 BY MR. GUNN:

4 Q. Well, let me take it one step at a time, one question at a
5 time.

6 First of all, do you remember being at birthday party?

7 A. Being in it?

8 Q. Being at the house, at the birthday party with cake.

9 A. Yes.

10 Q. And do you remember eating cake?

11 A. No.

12 Q. Do you remember people putting cake on each other's faces?

13 A. Yes.

14 Q. And that was sort of playing around; right?

15 A. Yes.

16 Q. And you were participating in the playing around; right?

17 A. I think I did.

18 Q. And you were happy, weren't you?

19 A. I do not know how I felt at the time.

20 MR. GUNN: I am sorry, is the screen off, Your Honor,
21 up there? The main screen? But the jury, I assume, had it over
22 here, Your Honor? Am I correct about that? I mean --

23 THE COURT: That screen is on, yes.

24 BY MR. GUNN:

25 Q. Let me ask you questions about something else, S.R.xxx;

1 okay?

2 There was a massage table in the house, wasn't there?

3 A. Yes.

4 MR. GUNN: Your Honor, could I have Government
5 Exhibit 1113 put in front of S.R.xxx.

6 THE COURT: Paul, do you have the exhibits?

7 MR. GUNN: Actually, I can put it up, Your Honor. I
8 have got a copy. That will work just as well.

9 Q. On the screen there, S.R.xxx, that's the massage table that
10 was in the house; right?

11 A. Yes.

12 Q. And you and the other girls did at times give Michael
13 massages on this massage table, didn't you?

14 A. Yes.

15 Q. And he would give each of you a dollar; right?

16 A. Yes.

17 Q. But Michael had his clothes on during those massages,
18 didn't he?

19 A. Wrapped with a towel.

20 Q. Those weren't really sexual massages, were they?

21 A. Massage.

22 Q. On at least one occasion -- let me rephrase that.

23 At least one time when you and the other girls living
24 in the house were giving Michael a massage, there was I.T.
25 living at the house; right? Or visiting?

1 A. I.T. used to live there.

2 Q. Well, I.T. stayed there for a few days; right?

3 A. Yes.

4 Q. And there was a time when I.T. was there when you and the
5 other girls were giving Michael a massage on the massage table;
6 right?

7 A. Yes.

8 Q. And she didn't want to help, did she?

9 A. I don't know.

10 Q. Well, you and the other girls told her she was dumb for not
11 helping, didn't you?

12 A. What do you mean dumb?

13 Q. Well, you teased her about not helping with the massage of
14 Michael; right?

15 A. I did not say that if she doesn't help, she's dumb.

16 MR. GUNN: I didn't hear the English answer.

17 THE INTERPRETER: I did not say that if she didn't
18 help, she is dumb -- she was dumb. I did not say that.

19 BY MR. GUNN:

20 Q. Did you tease her about not helping?

21 A. Correct.

22 Q. So you were not only willing to give these massages
23 yourself, but you tried to get this other girl, I.T., to join;
24 right?

25 THE INTERPRETER: I am sorry, Counsel. Can you

1 repeat?

2 MR. GUNN: Yes.

3 Q. So you were not only willing to give the massages yourself,
4 but you tried to get I.T. to help; right?

5 A. Ask the question again, please.

6 Q. Let me make it a little shorter and simpler, maybe.

7 You tried to get I.T. to help with the massages that
8 you and the other girls were willing to do; right?

9 A. No.

10 Q. You just said you teased I.T. for not helping; right?

11 A. I did not say anything about I.T.. I said anything to
12 I.T..

13 Q. You have enter -- we talked already about how you were
14 interviewed in this case and it was videotaped with Gary here;
15 right?

16 A. Interview?

17 Q. I'm sorry. You were asked questions at a meeting here by
18 Gary; right?

19 THE COURT: It wasn't here, was it?

20 MR. GUNN: Let me withdraw the question and rephrase
21 it.

22 Q. You were asked questions at a meeting in Cambodia by Gary
23 here; right?

24 A. Yes.

25 Q. You were also asked questions by other people in Cambodia

1 at other times; right?

2 A. Yes.

3 Q. You were asked questions by a Cambodian police officer?

4 A. Yes.

5 Q. And you were asked questions by a doctor named Dr. Watson
6 who did an examination of you?

7 A. I don't know who asked me but I know someone asked me.

8 Q. There was a doctor who did an examination of you soon after
9 the police came; right?

10 A. Ask me?

11 Q. Let me ask the question again.

12 After the police got you at the house, they took you
13 to a doctor; right?

14 A. Yes.

15 Q. And that doctor asked you questions about what happened
16 also; right?

17 A. Yes.

18 Q. And then another time you were asked questions by one of
19 the attorneys sitting at this table here, this Patty Donahue
20 here; right?

21 A. Yes.

22 Q. She has gone over questions with you several times; right?

23 A. She asked me several times.

24 Q. You didn't tell each of those people the same thing every
25 time they asked you questions, did you?

1 MS. DONAHUE: Objection. Vague.

2 THE COURT: Sustained.

3 BY MR. GUNN:

4 Q. Well, you told the doctor -- remember, you agreed the
5 doctor asked you questions; right?

6 A. Yes.

7 Q. You told the doctor that Michael, he made you give him oral
8 sex every day, didn't you?

9 A. Yes.

10 Q. You told the Cambodian police officer that Michael made you
11 give him oral sex twice a day but sometimes he just wanted a
12 massage; right?

13 A. Yes.

14 Q. You told Gary here that it was 30 times total over the
15 whole time you were there; right?

16 A. I said maybe.

17 Q. Maybe 30 times?

18 A. Yes.

19 Q. And the prosecutor here, Patty, you told her just that it
20 was, quote, lots of times, unquote, and you couldn't remember
21 how many; right?

22 A. Yes.

23 Q. There were also statements you made or at least a statement
24 you made to a man named James Pond who worked at Agape; right?

25 A. Yes.

1 Q. He was a director, sort of a head person at Agape, at the
2 shelter?

3 A. I don't know. I just know that he works there.

4 Q. Okay.

5 You told him that Michael was good to you, didn't you?

6 A. I don't remember.

7 Q. So you're saying you might have told him that?

8 MS. DONAHUE: Objection.

9 THE COURT: Overruled.

10 THE WITNESS: I want to say no.

11 BY MR. GUNN:

12 Q. But you can't say no because you really did tell him that,
13 didn't you?

14 A. I -- I don't remember.

15 Q. Now, I want to go back to the questions that Gary asked you
16 when he asked you questions in Cambodia. All right? Can I ask
17 you another question about that?

18 A. Yes.

19 Q. Thank you.

20 One of the things he asked you was who the boss in the
21 house was; right?

22 A. I don't remember.

23 Q. Would it help you remember if you could listen on the
24 headphones to that part of the video?

25 A. Maybe.

1 MR. GUNN: Your Honor, could I have her listen on the
2 headphones to -- it would be the first transcript, the first
3 section, CD 1, 35:25 through 35:45. Do we need Agent Wang?

4 THE COURT: All right. Go ahead.

5 MR. GUNN: It would be starting at minute 35, second
6 25.

7 (Whereupon, audio was played for the witness)

8 MR. GUNN: If the agent can make sure and stop it,
9 Your Honor, at 35:45.

10 BY MR. GUNN:

11 Q. Does that help you remember whether Gary asked you who the
12 boss was in the house?

13 A. Yes. I said Sang.

14 Q. You didn't say Michael; you said Sang?

15 A. Yes.

16 Q. Now, you're staying at a shelter right now called Agape;
17 right?

18 A. Yes.

19 Q. And you have been there for almost two years now?

20 A. Yes. Close to two years.

21 Q. And they're keeping you there because of what you told them
22 about being abused; right?

23 A. The center is helping victims like me.

24 Q. And they wouldn't keep you there if you said you weren't a
25 victim and Michael hadn't done anything to you, would they?

1 A. I wouldn't know. I wouldn't know because all those
2 children were all victims.

3 Q. And there is no one there who is not at least -- there is
4 no one there who is not a victim; right?

5 A. They're all victims.

6 Q. So if you weren't a victim, you wouldn't get to stay there;
7 right?

8 A. I wouldn't know.

9 Q. By the way the lady who is up there behind you is someone
10 who works at the shelter; right?

11 A. Yes.

12 Q. And one of the head people of the shelter is sitting back
13 here in the audience; right?

14 A. Yes.

15 Q. They're watching and hearing what you say?

16 A. Yes.

17 Q. There is a lot of benefits you get at the shelter, aren't
18 there?

19 A. Yes.

20 Q. They send you to school?

21 A. Yes.

22 Q. The rooms are nicer than the house you lived in before
23 Michael's house?

24 A. Can you ask the question again?

25 Q. You have a room you sleep in at the shelter; right?

1 A. Yes.

2 Q. And there is a room where you eat your meals with the other
3 girls?

4 A. Yes.

5 Q. And there is other rooms where you study or watch TV or do
6 things like that?

7 A. Yes.

8 Q. And all those rooms -- that building is a lot nicer than
9 the house you lived in before you went to Michael's house;
10 right?

11 A. The room there at the center, not that nice, but a lot
12 better than Michael's home.

13 Q. And better than the home you lived in with your parents
14 before Michael's home; right?

15 A. Can you ask the question again?

16 Q. Before you lived in Michael's house, you lived in another
17 house with your parents; right?

18 A. Correct.

19 Q. The rooms and building at the shelter is a lot nicer than
20 that house you lived in with your parents; right?

21 A. Yes.

22 Q. And the food at the shelter is better than where you lived
23 with your family?

24 A. Yes.

25 Q. It's -- in fact, it's so nice at the shelter that you have

1 told them you want to stay there until you're 18, haven't you?

2 A. Yes, I did.

3 MR. GUNN: No further questions, Your Honor.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION

6 BY MS. DONAHUE:

7 Q. S.R.xxx, when you were at Michael's house, did you suck on
8 the penis of any man besides Michael?

9 A. No.

10 MS. DONAHUE: I have no further questions.

11 THE COURT: Recross?

12 MR. GUNN: No, Your Honor. None.

13 THE COURT: Thank you, S.R.xxx. You're finished.

14 Is the defense going to call a witness?

15 MR. BROWN: Yes, Your Honor. We would call
16 Father Son. Your Honor, if I may just have a moment, I think
17 he's outside.

18 THE CLERK: Where is the interpreter? He checked in
19 this morning.

20 MR. BROWN: Yes. I believe he's in the restroom. May
21 I have one moment?

22 THE CLERK: Would the interpreter please come forward?
23 First let me swear in the interpreter.

24 Please state and spell your name for the record.

25 THE INTERPRETER: Chandara Hac. C-H-A-N-D-A-R-A.

1 Last name H-A-C.

2 Cambodian Interpreter Sworn

3 THE CLERK: Now if the witness would please raise his
4 right hand.

5 Un Son, Defendant's witness, was sworn

6 THE CLERK: For the witness, I need you to state and
7 spell your full name for the record.

8 THE WITNESS: I'm Un Son. U-N, S-O-N.

9 THE INTERPRETER: U-N, Un last name. First name
10 S-O-N.

11 THE COURT: Was the witness spelling that in English?

12 THE INTERPRETER: That was English.

13 THE COURT: Mr. Son, do you speak some English?

14 THE WITNESS: Yes.

15 THE COURT: You're using an interpreter.

16 THE WITNESS: Yes.

17 THE COURT: Please let the interpreter ask the
18 questions before you answer.

19 THE WITNESS: Yes.

20 THE COURT: And then answer in your language.

21 THE WITNESS: Yes.

22 THE COURT: Thank you.

23 You may proceed.

24 MR. BROWN: Thank you very much, Your Honor.

25 DIRECT EXAMINATION

1 BY MR. BROWN:

2 Q. Good morning, Father Son.

3 Father Son, could you please just tell the jury a
4 little bit about your background.

5 A. I am Father Un Son. I am working in Phnom Penh in the
6 church named Saint Joseph.

7 Q. Father Son, how large is the Saint Joseph church?

8 A. Saint Joseph is the largest church in Phnom Penh.

9 Q. What are your responsibilities at the church?

10 A. I'm working the church. I'm helping the church. There was
11 three priests in that church.

12 Q. Are you one of the priests at the church?

13 A. Yes. But now I was transferred to Kampot Province.

14 Q. Is that in Cambodia also?

15 A. Yes.

16 Q. Father Son, in the course of your work, had you met a
17 person named Michael Pepe?

18 A. Yes.

19 Q. How did you meet Michael Pepe?

20 A. Michael Pepe came to visit me in the church.

21 Q. And what was the purpose of that visit, if you know?

22 A. He asked me at the Catholic church and asked me if I ever
23 need any help -- that I can help you with.

24 Q. And when he said help, was he talking about just helping
25 with school supplies?

1 A. At that time, I told him that it's -- in our church we have
2 school to teach some children, and if you willing to, you can
3 supply us some school supply. The kindergarten.

4 Q. Okay.

5 It was your suggestion that Michael help provide
6 school supplies?

7 A. Yes.

8 Q. And were there specific schools that you suggested?

9 A. It's the place that I work at.

10 Q. And at some point, did you distribute school supplies?

11 A. I took him to look at the location.

12 Q. Okay.

13 And which locations were those?

14 A. I took him to the church in Svay Pak.

15 Q. Anywhere else?

16 A. And the other place, Bang Toun Pong. And also another one
17 called Muat Krosat.

18 Q. And those three areas are towns outside of Phnom Penh?

19 A. Yes.

20 Q. And what happened when you went -- well, when you went --
21 did you go on three different days to distribute school
22 supplies?

23 A. Yes. Because I brought him there different times.

24 Q. How long did these distributions last?

25 A. Two to three hours.

1 Q. Did Michael take pictures of these events?

2 A. Yes. Took some picture and also have a conversation with
3 children. I was the interpreter at the time.

4 Q. And where did these conversations with the children take
5 place?

6 A. In the classroom.

7 MR. BROWN: Your Honor, I have a few defense exhibits
8 I would like to present to the witness. I have one marked for
9 the Court and one providing a copy to Government counsel. It's
10 previously been marked as Defense Exhibit 375.

11 THE COURT: All right.

12 MR. BROWN: May I approach, Your Honor?

13 THE COURT: You may.

14 THE CLERK: 375 is before the witness.

15 BY MR. BROWN:

16 Q. Father Son, if you could just take a look at those
17 photographs and tell us if you recognize them.

18 A. Yes. These are the pictures at the church.

19 Q. And which church was this?

20 A. Mary Magdalen in Svay Pak. At the 11 kilometers.

21 Q. Svay Pak is 11 kilometers outside of Phnom Penh?

22 A. Yes.

23 MR. BROWN: Your Honor, may Defense 375 be admitted
24 into evidence.

25 THE COURT: Any objection?

1 MS. DONAHUE: No objection.

2 THE COURT: That's admitted.

3 (Defendant's Exhibit 375 was received)

4 MR. BROWN: May I publish, Your Honor?

5 Q. Looking at the first page of Defense 375, do you recognize
6 that photo?

7 A. Yes, I do.

8 Q. Is that you in the photograph?

9 A. Yes. It is my picture.

10 Q. Okay.

11 Who are the -- are those the school children?

12 A. Yes.

13 Q. Who took that photograph?

14 A. I think it's Mr. Pepe's group. Because he went there
15 with -- with another individual.

16 Q. Okay.

17 And what were the nature of the school supplies that
18 were distributed or provided by Mr. Pepe?

19 A. Some book, pencil, eraser, and also some kind of folder.
20 And some cookies and candies.

21 MR. BROWN: Your Honor, I have no further questions at
22 this time.

23 THE COURT: Cross-examination?

24 MR. BROWN: Thank you, Father Son.

25 CROSS-EXAMINATION

1 BY MS. DONAHUE:

2 Q. Good morning, Father.

3 A. Good morning.

4 Q. How long have you been in Cambodia?

5 A. Seventeen years.

6 Q. And your parish is in Phnom Penh?

7 A. Yes.

8 Q. And you have an outreach program in an area called Svay
9 Pak; is that right?

10 A. Yes.

11 Q. And Svay Pak is also called Kilo 11 because it's located
12 about 11 kilometers outside of Phnom Penh; is that right?

13 A. Yes.

14 Q. Svay Pak is a village; is that right?

15 A. Yes.

16 Q. There is extreme poverty in Svay Pak, isn't there?

17 A. Yes.

18 Q. That's one reason why your church has an outreach program
19 there?

20 A. Because over there you have some church-going Christian in
21 that area. Most of them some Vietnamese.

22 Q. It's a Vietnamese village; right?

23 A. Yes.

24 Q. Vietnamese immigrants to Cambodia live there?

25 A. Yes.

1 Q. And people in Svay Pak live in crowded shacks, would that
2 be fair to say?

3 A. Yes. Mostly. Yes.

4 Q. And Svay Pak is well-known as a destination for people who
5 want to have sex with children, isn't it?

6 A. Yes.

7 Q. Svay Pak has brothels where children are locked in rooms
8 and required to have sex with adults, doesn't; it?

9 A. That I do not know. But I do know that it's a brothel in
10 that area.

11 Q. There are brothels in Svay Pak, aren't there?

12 A. A lot.

13 Q. A lot of brothels; right?

14 A. Yes.

15 Q. In fact, your parish center in Svay Pak is located right
16 next door to House No. 5, which used to sell very young children
17 for sex; isn't that right?

18 A. I do not remember is No. 5, but we was at the end.

19 Q. And you know that there are brothels in Svay Pak that sell
20 children for sex?

21 A. Yes.

22 Q. In fact, the sale of children for sex is a big problem in
23 Cambodia, isn't it?

24 MR. BROWN: Your Honor, I am going to object on
25 relevance ground. Beyond the scope. 403.

1 THE COURT: Sustained.

2 BY MS. DONAHUE:

3 Q. Father Son, you met the defendant, Mr. Pepe, in this case,
4 when he came to your church; is that right?

5 A. Yes.

6 Q. And he asked you what outreach programs to the community
7 your church had; is that right?

8 A. Yes.

9 Q. What programs did you tell him the church has?

10 A. I told him about the class that we have, kindergarten.

11 Q. Did you tell him about any other programs that your church
12 offers?

13 A. I only told him about the school. Because of another thing
14 that I told him that we concentrate on school and we try to
15 educate them because in Svay Pak area, you heard a lot of bad
16 things happen like brothel.

17 Q. You also told him that your church has an outreach program
18 to sick people; isn't that right?

19 A. No. Only the people who was ill. Only the sick people.

20 Q. You told the defendant that your church has a program to
21 help ill people; is that right?

22 A. Yes.

23 Q. You also told him your church has a program that reaches
24 out to older people; is that right?

25 A. I don't recall that I did say that.

1 Q. And the defendant was interested only in the programs for
2 children; is that right?

3 MR. BROWN: Objection, Your Honor. Misstates the
4 testimony, assumes facts not in evidence.

5 THE COURT: Overruled.

6 MR. BROWN: Calls for speculation.

7 THE COURT: Overruled.

8 THE WITNESS: Well, because I only proposed to him for
9 that reason.

10 BY MS. DONAHUE:

11 Q. You proposed to him that he help children; is that right?

12 A. Yes.

13 Q. And he told you he loves so much to visit the children,
14 didn't he?

15 MR. BROWN: Objection, Your Honor, argumentative, 403,
16 assumes facts not in evidence.

17 THE COURT: Overruled.

18 THE WITNESS: Because I explained to him about the
19 program of the children, that's why he visit that particular . .

20 BY MS. DONAHUE:

21 Q. And, Father, in February of this year, you met with Special
22 Agent Phillips from Immigration and Customs Enforcement, the man
23 sitting on the edge of this table, didn't you?

24 A. Yes, I did.

25 Q. You told Special Agent Phillips that the defendant said he,

1 the defendant, loves so much to visit the children?

2 A. Yes. Because each time he went there, he saw the program,
3 he saw the children, he was very excited and happy.

4 Q. The defendant was very excited and happy every time he saw
5 the children; is that right?

6 A. Well, what I meant was that he loved to have a conversation
7 with the children and allow the children to ask questions such
8 as how the soap was made.

9 Q. Did you see the defendant having conversations with
10 children?

11 A. Yes. I'm there. In the same room. The children sat on
12 the floor, we sat on the chair.

13 Q. And tell us what happened.

14 A. Just question and answer. That's all.

15 Q. And you acted as the interpreter?

16 A. Yes. And also another lady was with us; and also another
17 sister was there, too.

18 Q. And that sister --

19 A. She is also a teacher there.

20 Q. The sister is also a teacher; is that right?

21 A. Yes. She is in charge.

22 Q. And she works directly with the children; is that right?

23 A. She is in charge with the teacher.

24 Q. And you introduced the defendant to that sister, didn't
25 you?

1 A. Yes.

2 Q. How many times did you go with the defendant to Svay Pak?

3 A. I think twice.

4 Q. And both times did Michael sit down and meet with the
5 children?

6 A. Yes. And I also was there to interpret.

7 Q. And he spent two to three hours with the children; is that
8 right?

9 A. Yes.

10 Q. And he brought -- the defendant brought his digital camera
11 with him, didn't he?

12 A. Yes.

13 Q. And he used --

14 A. Yes. Because I do not have camera with me.

15 Q. And the defendant used his digital camera to take
16 photographs of the children; is that right?

17 A. Yes.

18 Q. When the defendant was around the children, he acted very
19 happy, loved and liked the children; is that right?

20 MR. BROWN: Objection, Your Honor. Asked and
21 answered.

22 THE COURT: Overruled.

23 THE WITNESS: He's just happy to see that the children
24 happy to see him. That he visit them.

25 BY MS. DONAHUE:

1 Q. The children looked very happy to see him, didn't they?

2 A. And also because I was there because those children are
3 very close to me.

4 Q. In fact, Father, it would be fair to say those children in
5 Svay Pak are starved for attention, aren't they?

6 A. Yes.

7 Q. It would also be right to say those children are starved
8 for affection?

9 A. Well, they are very happy to see people who are interested
10 in helping them because you can see some of them are 10 years
11 old, haven't even been to school.

12 Q. Their families are very poor; isn't that right?

13 A. Yes. Because of that reason, that's why we have outreach
14 program to that area.

15 Q. Right.

16 And in that community in Svay Pak, a lot of those
17 children are expected to bring money home for their families,
18 aren't they?

19 MR. BROWN: Objection, Rule 403, beyond the scope.

20 THE COURT: I think it lacks foundation, but
21 otherwise, overruled.

22 Do you want to lay some foundation?

23 BY MS. DONAHUE:

24 Q. Father Son, you have been in Cambodia for 17 years; is that
25 right?

1 A. Yes.

2 Q. You have been to Svay Pak many times, haven't you?

3 A. I was in charge in ten church in Phnom Penh. Svay Pak is
4 just one of them.

5 Q. And you are, after 17 years, very familiar with Cambodian
6 culture; would that be fair to say?

7 A. Yes.

8 Q. You're also very familiar with the culture of the
9 Vietnamese immigrant community in Cambodia, aren't you?

10 A. Yes.

11 Q. A lot of the Vietnamese immigrants in Cambodia live in
12 abject poverty; isn't that right?

13 A. Yes.

14 Q. In both of those communities, children are required to obey
15 their parents; isn't that correct?

16 MR. BROWN: Same objection, Your Honor. 403.

17 THE COURT: Overruled.

18 THE WITNESS: Yes. But it's a little bit different
19 between Cambodian and Vietnamese.

20 BY MS. DONAHUE:

21 Q. What's the difference?

22 A. What I meant was that the Vietnamese children are more open
23 than the Cambodian kid.

24 Q. When you say open, do you mean less obedient?

25 A. I meant that they not shy.

1 Q. But in the poor community in Cambodia, the family structure
2 is very hierarchal; would that be fair to say?

3 A. I do not understand the question.

4 Q. Oh, okay.

5 In your work in Cambodia over the last 17 years, have
6 you met a lot of families?

7 A. Yes. Yes. Because I am the priest and I have to reach
8 out.

9 Q. Yes.

10 A. To those families.

11 Q. And those families have parents and children; right?

12 A. Yes.

13 Q. And in the Cambodian culture, the children are required to
14 respect their parents; is that right?

15 A. Yes. Yes. But nowadays, we have a problem with the
16 children kidnapped, addicted to drug. It's very difficult to --
17 kind of like --

18 Q. My question is about the children. Children are required
19 to respect especially the mother; isn't that right?

20 MR. BROWN: Objection, Your Honor. Relevance.

21 THE COURT: I will allow this question but then we are
22 getting way beyond anything I can figure out.

23 Answer that question.

24 THE WITNESS: Yes. Because they're parent.

25 BY MS. DONAHUE:

1 Q. And in Cambodia, children often are expected to bring home
2 money for the family; isn't that right?

3 MR. BROWN: Same objection, Your Honor.

4 THE COURT: Overruled.

5 THE WITNESS: No.

6 BY MS. DONAHUE:

7 Q. You're not familiar with that?

8 A. No.

9 Q. Isn't that why the children are sold for sex in the
10 brothels in Svay Pak?

11 A. Well, that is the business, but in general, people -- the
12 children doesn't have to bring anything.

13 Q. Now, Father, when you -- you never went to Mr. Pepe's
14 house, did you?

15 A. No.

16 Q. You have never been there?

17 A. That's correct.

18 Q. You don't know who else lived in his house, do you?

19 A. Yes. I don't know. That's correct.

20 Q. He never told you that he had children living at his house,
21 did he?

22 A. No.

23 MS. DONAHUE: I have no further questions.

24 THE COURT: If it's going to be short, Mr. Brown.
25 Otherwise, we will take our break.

1 MR. BROWN: It would be short, Your Honor.

2 THE COURT: Okay.

3 REDIRECT EXAMINATION

4 BY MR. BROWN:

5 Q. Father Son, just talking about Svay Pak, just briefly, you
6 indicated that there was a specific need at Svay Pak for
7 outreach; correct?

8 A. Yes. Need some supply for the school. This is to
9 encourage the children.

10 Q. And there is a lot of poverty in Svay Pak; correct?

11 A. Yes.

12 Q. And could you talk about briefly the significance of the
13 fact that the area is largely Vietnamese? Is there just
14 discrimination in Cambodia between the Vietnamese and the
15 Cambodian people sometimes?

16 A. Well, you see, in Svay Pak area, it's the place that has a
17 lot of brothel and that's why they gave the idea that that area
18 is not respectable.

19 Q. Had there been an effort to clean up Svay Pak by Cambodian
20 authorities prior to the outreach that you did with Michael
21 Pepe?

22 A. No. Only our church that we care enough to get involved,
23 to help those children. Because church does have support from
24 some of the community and also different -- different group that
25 help.

1 Q. So when Michael Pepe came to you, it wasn't his idea to go
2 to Svay Pak, was it?

3 A. That is correct. It's I the one that propose to him.

4 Q. And why did you propose that to him?

5 A. Because I felt that the children needs some support and
6 also something that they can be proud of.

7 Q. And when you went to Svay Pak, you went as a group;
8 correct?

9 A. Yes. I and sister and we went there to meet another
10 teacher in that area. Mr. Pepe also have another person
11 accompany him.

12 Q. And these outings lasted only a couple of hours; right?

13 A. Yes.

14 Q. And they were a classroom setting?

15 A. Yes. It's in the surrounding areas of school, either in
16 the classroom or outside in the school yard when they are having
17 a recess, that's how we took the picture.

18 Q. Did you ever -- was Mr. Pepe ever alone with the children,
19 to your knowledge?

20 A. No.

21 Q. Did he ever make an effort to be alone with the children,
22 to your knowledge?

23 A. No. I did not see anything different beside that we all
24 together there.

25 Q. You said that one of the sisters worked at the school as a

1 teacher?

2 A. She is in charge in all the teacher.

3 Q. And do you speak with her often?

4 A. Yes.

5 Q. So do you have a lot of information about if Mr. Pepe
6 returned to Svay Pak, would you have heard of that?

7 A. That's true.

8 Q. You never heard that after these meetings Mr. Pepe returned
9 to Svay Pak on his own?

10 A. No. If he did showed up in Svay Pak, the teacher will
11 inform me.

12 MR. BROWN: Thank you, Your Honor. I have no further
13 questions.

14 THE COURT: Brief recross? Don't feel compelled.

15 RECROSS EXAMINATION

16 BY MS. DONAHUE:

17 Q. Father Son, you told Special Agent Phillips the defendant
18 was only interested in children's programs; right?

19 A. I just felt that for that kindergarten program, if have
20 someone interested to help, it will be benefit for the children.

21 Q. Father, I'm not asking you what you felt. I am asking you
22 what you told Special Agent Phillips when you met with him in
23 Phnom Penh on March 4th of this year.

24 My question is you told Special Agent Phillips --

25 A. Yes.

1 Q. -- that Mr. Pepe was only interested in children's
2 programs?

3 A. Well, it's true, but it's not only the children in Svay
4 Pak, it's also in Bang Toum Pong and also at a different area,
5 Muat Krosat.

6 MS. DONAHUE: I have no further questions.

7 THE COURT: Mr. Brown?

8 MR. BROWN: I have no further questions.

9 THE COURT: Thank you, sir. You are excused.

10 And we will take a 15 minute recess. Ladies and
11 gentlemen, don't talk about the case or form or express any
12 opinions about the case until it's finally submitted to you.

13 (Recess taken)

14 (Jury Out)

15 MR. LULEJIAN: Your Honor, we would like to call
16 Dr. Berkowitz out of order.

17 THE COURT: There is no order. Call whoever you want.
18 I don't care.

19 MR. LULEJIAN: The only issue that comes up is the two
20 photographs that are part of the 404(b) order that the judge
21 ruled -- that you ruled on that are coming in through a later
22 witness, I have spoken with Mr. Brown, he seems to be agreeable
23 to allowing us to use it for Dr. Berkowitz's testimony.

24 MR. BROWN: We object, Your Honor -- just joking.

25 (Jury In)

1 THE COURT: Mr. Lulejian, does the Government have
2 another witness?

3 MR. LULEJIAN: Yes, Your Honor. The United States of
4 America calls Dr. Carol Berkowitz.

5 THE CLERK: Would you please come forward.
6 Carol Berkowitz, Government's witness, was sworn

7 THE CLERK: Would you please have a seat. Please
8 state and spell your full name for the record.

9 THE WITNESS: It's Carol, C-A-R-O-L, Berkowitz,
10 B-E-R-K-O-W-I-T-Z.

11 THE COURT: You may proceed.

12 DIRECT EXAMINATION

13 BY MR. LULEJIAN:

14 Q. Good morning.

15 A. Good morning.

16 Q. What is your occupation?

17 A. I am a pediatrician.

18 Q. Dr. Berkowitz, who is your employer?

19 A. I work at Harbor UCLA Medical Center.

20 Q. And do you specialize in anything?

21 A. In pediatrics.

22 Q. And how long have you been a physician?

23 A. Thirty-nine years.

24 Q. And how many of those have been at UCLA?

25 A. Nearly 30 years. 30 years on August 1st.

1 Q. Where did you attend medical school?

2 A. At Columbia University, College of Physicians and Surgeons.

3 Q. And where did you do your residency and internship?

4 A. At the Roosevelt Hospital in New York City.

5 Q. Are you board certified, doctor?

6 A. I am.

7 Q. In which fields?

8 A. I am board certified in pediatrics and I have sub boards in
9 pediatric emergency medicine.

10 Q. What does it mean to be board certified?

11 A. It means that you have had specialized training in an area
12 and then sat for a certifying examination.

13 Q. And do you regularly have to be re-certified?

14 A. Actually for pediatrics, I don't, but I have been. But for
15 peds emergency medicine, yes.

16 Q. Have you published anything, Doctor?

17 A. I have.

18 Q. Approximately how many articles do you believe you have
19 published during the course of your career?

20 A. In terms of peer-reviewed articles, probably about 50.
21 Book chapters, probably about 75. And articles that we would
22 say are not peer-reviewed in that they're -- they're invited
23 articles, probably about 20.

24 Q. Do you currently serve on the faculty of any university or
25 medical school?

1 A. I do. What is now called the David Geffen School of
2 Medicine at UCLA.

3 Q. During the course of your 39 years as a pediatrician --

4 A. Yes.

5 Q. -- about how many children do you think you have examined?

6 A. Probably 50 to 60,000.

7 Q. Have you ever testified as an expert before?

8 A. I have.

9 Q. Approximately how many times?

10 A. Probably about seven to 800 times.

11 Q. What type of proceedings were those?

12 A. The majority are -- have been in dependency court.

13 Q. Have you ever testified in federal court before?

14 A. I have.

15 Q. Which one?

16 A. I think the one On Hill Street.

17 Q. So it would be here in the Central District of California?

18 A. Yes.

19 Q. Approximately how many times have you testified here in the
20 central district?

21 A. About a half a dozen times.

22 MR. LULEJIAN: Your Honor, the Government offers
23 Dr. Carol Berkowitz as an expert in the area of pediatrics.

24 THE COURT: Any objection?

25 MR. BROWN: No objection, Your Honor.

1 THE COURT: All right. She is an expert in that
2 field.

3 BY MR. LULEJIAN:

4 Q. Dr. Berkowitz, I am going to put an image up on the screen
5 for you to look at, if I can get my computer to work.

6 A. Okay.

7 Q. For the record, I am showing the witness 1423. My
8 apologies.

9 Dr. Berkowitz, before coming to court today, have you
10 seen this picture?

11 A. I have.

12 Q. Was this part of a series of photographs that you reviewed?

13 A. Yes, it was.

14 Q. Based on your training and experience as a pediatrician,
15 were you able to form an expert opinion as to the age of this
16 girl?

17 A. I did.

18 Q. Would you please state your opinion for the Court?

19 A. My opinion was that this girl was under the age of 17 years
20 for sure. Under the age of 18.

21 Q. Were you able to come up with as opinion as to what age her
22 appearance was consistent with?

23 A. It would be consistent with that as an upper limit, and I
24 felt more consistent with an age of about 15 to 16 years -- 15
25 years.

1 Q. Doctor, would you please explain to the Court the bases on
2 which you based your opinion?

3 A. Right. So the basis of my opinion is related to her level
4 of sexual maturity.

5 Q. When you say -- I'm sorry. When you say level of sexual
6 maturity, what do you mean?

7 A. That is the level of development of her what we refer to as
8 secondary sexual characteristics, particularly the breast
9 development, the pubic hair development and the development of
10 the external genitalia.

11 Q. Let's start with the breast development. What were you
12 able to determine by looking at this and the other photographs
13 about the development -- sexual maturity with respect to the
14 breasts of this girl?

15 A. My determination was that her breast development would have
16 a sexual maturity rating of No. 4 or an SMR of 4.

17 Q. Doctor, I went to law school instead of medical school.

18 Could you tell us what a sexual maturity rating is and
19 what the numbers mean?

20 A. So the notion of the sexual maturity rating relates to the
21 fact that individuals go through puberty, and they go through
22 puberty in a predictable manner in terms of the way -- the
23 breasts' development, the way the genitals develop. So a sexual
24 maturity rating of a 1 is before you have even started puberty.
25 That would be consistent with prepubescent.

1 As one goes through the different stages, development
2 progresses and there are characteristics that define those
3 periods.

4 So a sexual maturity rating for the breasts of a 2,
5 when that happens, the breasts are small and a little bit of a
6 mound. And the area around the nipple called the areola gets a
7 bit larger.

8 By the time that you are a sexual maturity rating for
9 breasts of a 3, there is -- there is further enlargement, and
10 the areola and nipple are more pronounced, but they do not stand
11 away from the breast tissue.

12 By a sexual maturity rating 4, the breasts are still
13 lateral on the chest, but you can see a separate mound from the
14 areola and the nipple that together form one structure but
15 separate from the breast tissue.

16 And the sexual maturity rating 5 which is basically
17 the adult appearance, okay, that mound, the difference between
18 the areola and the breast is no longer present and the nipple
19 stands away.

20 Q. Doctor, with respect to the girl who is in this exhibit,
21 Exhibit 1423, what led you to conclude with respect to the
22 breasts that she had a level of 4, SMR 4?

23 A. Right. So I was able to see that the areola and the nipple
24 stood away from the breast tissue themselves. So that would be
25 consistent with a 4 and not a 5.

1 And in addition, the breast tissue is laterally placed
2 and not yet moving medially so that it covers her sternum. So
3 it was by the appearance of the areola and the nipple and the
4 location of the breasts that led me to conclude that her breast
5 development would have a sexual maturity rating of a 4.

6 Q. When you say laterally, what do you mean by that?

7 A. The -- the breasts are over the rib cage as opposed to
8 covering some of the sternum.

9 Q. Where on the body would the sternum be located?

10 A. In the middle portion of the chest.

11 Q. So right about here?

12 A. Yes. Under your tie.

13 Q. Under my tie. Okay.

14 In looking at this girl, can you tell -- can you tell
15 what type of ethnic group she belongs to?

16 A. She appears to be Asian.

17 Q. Have there been any studies with respect to SMR and girls
18 and boys who are Asian?

19 A. There have been.

20 Q. And if looking at southeast Asian girls, what is the median
21 age of sexual maturity for a girl of this nature?

22 A. The median age for sexual maturity rating, I would go to
23 the next level. In other words, the median age for sexual
24 maturity rating of a breast development of a 5 was about 13 and
25 a half years. 13.46 years.

1 Q. And would you just look at the next level or would you look
2 to something called standard deviations?

3 A. Right. So that you would be -- would be to look to the
4 next level which would mean if the median age of a sexual
5 maturity rating for breast development of a 5 is 13.46, that
6 would mean 50 percent of girls would have achieved that by
7 13.46. Let's say 13 and a half years.

8 If you take into account the standard deviation, which
9 is about 1.2 years, based on the studies that have been done,
10 then you could say 84 percent of girls would have achieved a
11 sexual maturity rating of 5 in this southeast Asian population
12 that was studied by 14 plus years. And 99 percent, that is, two
13 standard deviations above the mean, would have achieved it by
14 about 16 and a half years. So just adding 1.2 to one standard
15 deviation and two standard deviations.

16 So you could say, based on the medical literature, 99
17 percent of the southeast Asian girls that were in this study had
18 achieved a sexual maturity rating for their breast development
19 of a 5 by 16.8 years.

20 So if you could say then that if she's at a 4, she
21 hasn't gotten to her 99 percent of girls of her background would
22 have been, which would be 16 and a half years.

23 Q. Okay.

24 Besides the breasts, you said there were two other
25 factors that you looked at. What were those?

1 A. Okay. So her pubic hair. And her pubic hair -- again, the
2 pubic hair development is staged in terms of a sexual maturity
3 rating.

4 Sexual maturity rating 1: No pubic hair. Sexual
5 maturity rating 2: Fine, downy pubic hair. Sexual maturity
6 rating 3: Coarse, curly pubic hair that's just over the mons.
7 The mons is really the structure that is really right on top of
8 the girl's genital area. Sexual maturity rating 4: The pubic
9 hair has gone down the labia. And a sexual maturity rating 5,
10 which is, again, an adult level, the pubic hair has gone down to
11 the thighs.

12 Q. With respect to this girl, what did you determine her
13 sexual maturity rating was for purposes of pubic hair?

14 A. Right. Based on the materials I reviewed, her pubic hair
15 maturity rating was 3. There was no pubic hair really down her
16 labia. It was coarse, curly pubic hair, so not a 2, but it was
17 confined to her mons.

18 Q. And if you were to associate ages with that level and go
19 through the standard deviation or moving along the bell curves
20 you have talked about, what would those ages be for pubic hair?

21 A. Right. So again if we did one stage greater, a sexual
22 maturity rating of a 4, and used that same methodology, the mean
23 age is -- if I'm remembering right -- about 14 years. So by
24 about 15 and a half years, 84 percent of girls of southeast
25 Asian background would have achieved a sexual maturity rating of

1 4, and 99 percent by the time they're 17 years old would have
2 had a more advanced sexual maturity rating. So they would have
3 already had hair down the labia.

4 She had not gotten to that stage, so you could say
5 that her age would have been under 17 based on the fact that 99
6 percent of girls would have had more advanced pubic hair from
7 the same background.

8 Q. Doctor, let's turn to the third factor, the labia.

9 What did your observations reveal about that?

10 A. Right. So there are not sexual maturity ratings applied to
11 the labia but the labia do change over the course of puberty.
12 So in prepubescent girls, the labia majora, which is basically
13 what I'm looking at, they're thick and full and have fatty
14 tissue present.

15 As one goes through puberty, the labia majora becomes
16 thinner and more elongated. That's a gradual progression and
17 not as clearly defined by the literature as the breast and pubic
18 hair development.

19 And so when I looked at her labia, her labia really
20 are not elongated. They are more immature in appearance which
21 would be consistent with being in an earlier phase of one's
22 pubertal development.

23 Q. Once again your opinion of the age range of this girl is?

24 A. About 15 years of age.

25 Q. Maybe as high as 17?

1 A. It could be as high as 17, based on the published
2 information about girls from that background.

3 Q. And your analysis also involved your experience -- let me
4 rephrase that question.

5 Actually, I will move on. I am going to show you
6 another picture now, doctor. This is Exhibit No. 1314.

7 Doctor, had you seen this picture before you came into
8 court today?

9 A. I did.

10 Q. Was this picture also a part of a series of photographs
11 that you examined?

12 A. It was.

13 Q. Based on your training and experience in pediatrics, what
14 is your opinion as to the age of the girl to right? And I think
15 you referred to her as LK.

16 A. I'm sorry, which?

17 Q. I'm sorry, LK.

18 A. Well, the girl to the right has pubic --

19 Q. I am sorry. I have got dyslexia. The girl to the left. I
20 can't read.

21 A. So just to make certain we're talking about the same girl,
22 the girl -- disappeared from my screen. Okay. The girl on the
23 left does not have pubic hair and that's the girl that we're
24 talking about.

25 Q. She is the one who is facing away from the camera?

1 A. Right. So that girl really would be a sexual maturity
2 rating of 1 for both breast development and pubic hair in that
3 she really has no evidence of any breast development, she has no
4 pubic hair. Her labia are also full and thick, and really
5 prepubescent, so I would say she -- she hasn't even started her
6 pubertal development in terms of having any evidence of the
7 effect of her female hormones on any changes in her body.

8 Q. What, if any, effects did you see on her hips?

9 A. Her body contour is also consistent with someone who has
10 not gone through puberty.

11 Q. And the numbers you gave, those would be estimated ages; is
12 that correct?

13 A. Yes. And I gave an estimated age that she was about nine
14 or ten years old.

15 Q. Is it possible she's a little older?

16 A. It is possible.

17 Q. By how much do you think?

18 A. A year or so older.

19 Q. I am going to ask you to take a look at the other girl.
20 This one is on the right. She is facing the camera.

21 Did you form an opinion based on your training and
22 experience of her age?

23 A. I did.

24 Q. And what is that opinion?

25 A. Her -- I would estimate her age to be about 12 or 13 years.

1 Q. What are the bases of your opinion?

2 A. Her breast development is consistent with a sexual maturity
3 rating of a 2. Her pubic hair is really more like a 2 to 3 or
4 about a 3 because she appears to have some hair that has tracked
5 down onto the -- to the -- I'm sorry. A 3 to 4. Excuse me.
6 She has hair over her -- over her mons but also hair that's
7 tracked down to the labia. So her pubic hair development is a
8 bit more advanced than her breast development.

9 Q. From this picture were you able to make an observation
10 about her labia?

11 A. Her labia also seemed to be full, fleshy, again consistent
12 with being earlier in the pubertal development.

13 MR. LULEJIAN: I have no further questions,
14 Your Honor.

15 THE COURT: Cross-examination?

16 MR. BROWN: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. BROWN:

19 Q. Good morning, Dr. Berkowitz.

20 A. Good morning.

21 Q. You prepared a brief letter outlining your findings for the
22 Government; correct?

23 A. Yes.

24 Q. And you used some terminology in the letter. You talked
25 about published standards for the sexual maturation of cross

1 cultures.

2 Do you recall that?

3 A. Yes.

4 Q. And in your letter, you indicated that there was some
5 degree of variation between studies.

6 Do you recall that?

7 A. Yes.

8 Q. Okay.

9 What are the factors that affect variation in those
10 studies?

11 A. So some of the factors relate to when the studies were
12 done. Some studies were done in the '60s. Some of them more
13 recent. Some studies were cross-sectional. In other words,
14 they took a whole group of girls and examined them. And others
15 studies were longitudinal. They followed the same child over
16 time.

17 Q. And that was in a specific ethnic group or across racial
18 lines?

19 A. The studies that I was referring to were studies that were
20 conducted specifically in certain ethnic groups, and there's
21 probably, oh, maybe 12 or 15 studies that have been specifically
22 done in certain ethnic groups.

23 Q. But most of your -- your opinion is based on a Singapore
24 study; is that correct?

25 A. That's correct.

1 Q. Okay.

2 So it was a study of people who are ethnically
3 Singaporees or ethnically from the country of Singapore?

4 A. They were people from the country of Singapore.

5 Q. There were no studies of women from Cambodia; correct?

6 A. That's correct.

7 Q. And ethnicity and race is a factor, wouldn't you say, in
8 terms of development?

9 A. It's a factor, except that among the 15 studies that were
10 done, the variation was quite minor and would be maybe about a
11 half a year to eight months in terms of the variation that was
12 shown for different stages of sexual maturity rating.

13 Q. When you talk about the term sexual maturity rating, that
14 was a concept that was developed by a doctor named Tanner;
15 correct?

16 A. Actually it antedated Dr. Tanner and was first described in
17 1901 by Dr. Stutz and in the 1940's was further elaborated on by
18 a Dr. Whitehouse and a co-author. So it's over a hundred years
19 old.

20 Dr. Tanner popularized the notion and expanded.
21 Dr. Whitehouse's ratings had only four groups. Dr. Tanner
22 expanded to -- to five. So I guess if we used a name, we should
23 use Dr. Stutz's name because he was the first person who
24 reported it.

25 Q. But it's known in medical circles as the Tanner scale;

1 correct?

2 A. We don't use that term anymore because Dr. Tanner actually
3 didn't have the same level of refinement and description that
4 has since been put into the evaluation. Dr. Tanner never really
5 described about the changes in the areola and the nipple. He
6 really focused more on breast and location. There was a study
7 that was done by the American Academy of Pediatrics, and that
8 came out with a much greater refinement. And really almost all
9 reports nowadays use the term "sexual maturity rating" or
10 "sexual maturity index."

11 Q. Okay.

12 But those indices are functional or expanded on the
13 concepts that Dr. Tanner and his predecessors developed in terms
14 of trying to determine a person's sexual maturity based on
15 physical features; correct?

16 A. Right. It was really developed to assess how someone was
17 progressing through puberty and whether their development was
18 progressing at an expected rate or not.

19 Q. So you are familiar with Dr. Tanner's critique of the use
20 of the scales to predict age based on physiological factors?
21 You're aware that he was highly critical of expert testimony
22 based on these types of studies? Right?

23 A. I'm aware he wrote one letter to a pediatric journal and
24 then retracted some of what he said, actually.

25 Q. Have you read the letter that Dr. Tanner wrote?

1 A. I have.

2 Q. So you're aware that Dr. Tanner basically said the sexual
3 maturity rating or the use of his scale was designed to predict
4 or to ascertain a person's level of -- a woman -- or a girl's
5 level of sexual maturity when the age was already known,
6 correct?

7 A. Right. But I don't use his scale.

8 Q. But the scale that you use is based on his research;
9 correct?

10 A. But it's not his scale.

11 Q. Dr. Tanner was highly critical of the error rate in the
12 ability to predict age based on a lot of independent variables;
13 correct?

14 A. He -- he spoke about that as one of the reasons why he was
15 opposed to using his scale.

16 Q. And there are a lot of independent variables that go into
17 the determination of a person's age based on their physical
18 appearance; right?

19 A. Yes.

20 Q. For example, a person's nutrition could affect how they
21 develop sexually?

22 A. That's correct.

23 Q. A person's genetic makeup could affect how they develop?

24 A. Yes.

25 Q. Some people have larger breasts and some people have

1 smaller breasts; correct?

2 A. Right. But breast size is not the determinant that is used
3 for sexual maturity rating. Dr. Tanner used it but it's no
4 longer used that way.

5 Q. But I guess my point is that there are -- there are ethnic
6 factors that go into sexual development?

7 A. Right. And so we try to use the ethnic guidelines specific
8 to any group where that assessment is being made.

9 Q. But your opinions are not based on any study of Khmer
10 people and their sexual development?

11 A. That's true.

12 Q. And you did not do any longitudinal studies of Khmer
13 women's development over time; correct?

14 A. That's correct.

15 Q. And you did not do any -- I forget the term you used --
16 cross-sectional studies of Khmer women in terms of how they
17 developed over time?

18 A. That's correct.

19 Q. So in terms of a cross-sectional study, you said that was a
20 study where you analyzed different people from the same ethnic
21 group; correct?

22 A. Right. At different ages.

23 Q. Right. And the longitudinal study would analyze a
24 particular group of girls as they matured through time; correct?

25 A. That's right.

1 Q. You did not do that with respect to Khmer?

2 A. No.

3 Q. Did you do that with respect to Vietnamese?

4 A. No.

5 Q. In this case, you never -- you never saw the people in
6 question in the photos; correct?

7 A. That's correct.

8 Q. You did not do face-to-face physical measurements or
9 anything like that?

10 A. That's correct.

11 Q. So your opinion is based only on your observations of these
12 particular photographs; correct?

13 A. I'm -- and not just the two that were shown, but there was
14 a series of photographs.

15 Q. Certainly. Certainly. But it was a group of photographs
16 that you looked at?

17 A. That's correct.

18 Q. Okay.

19 When you looked at the photographs, did you look at
20 those -- did you analyze those photographs in a clinical -- did
21 you use a specific clinical methodology to examine the
22 photographs?

23 A. I did.

24 Q. Okay.

25 With respect to pubic hair, I mean, it's fair to say

1 that sometimes people shave their pubic area?

2 A. That's absolutely true.

3 Q. And in one of your findings you found that the person had
4 actually shaved; correct? Or there was evidence of shaving?

5 A. The first photograph in that photo, the young lady had
6 pubic hair but there were additional photographs of her where
7 she had no pubic hair.

8 Q. So it was evidence of --

9 A. That she had shaved.

10 Q. You couldn't tell from the -- strike that.

11 Your Honor, I have no further questions at this time.

12 THE COURT: Redirect?

13 MR. LULEJIAN: Yes, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. LULEJIAN:

16 Q. Doctor, just so we're clear, were your -- was your opinion
17 based on one photograph or the entire group?

18 A. It was based on the entire group.

19 Q. Now, what year was Dr. Tanner's study?

20 A. I think Dr. Tanner first published in 1969.

21 Q. Since that time have other studies come out?

22 A. Yes.

23 Q. And those were the studies you were talking about earlier?

24 A. Yes.

25 Q. Okay.

1 I want to ask you about one particular study, the
2 Singapore study. Will you please tell us why that study came
3 about and what it focused on?

4 A. That was a study of both boys and girls in Singapore.
5 Dr. Wong was the main author. It came out in 1977 in the
6 Journal of the Singapore Pediatric Society, and it was focusing
7 on looking at that particular population to determine their
8 progress through puberty, the age of menstruation in the girls
9 so it was specific to look at that population.

10 Q. And with respect to that study, how did it compare with the
11 other 14 or 15 studies you talked about?

12 A. Again, pretty -- pretty comparable in terms of the age of
13 the sexual maturity achievement of the different levels of
14 sexual maturity with differences that ranged really in maybe a
15 half a year or months in terms of the achievement. So it spoke
16 to greater uniformity of cross cultures.

17 Q. Doctor, when you looked at those pictures, did you base it
18 on when the photographs were taken, your opinion?

19 A. I'm sorry. I didn't --

20 Q. The -- one second --

21 I have no further questions, Your Honor.

22 THE COURT: Mr. Brown?

23 RECROSS-EXAMINATION

24 BY MR. BROWN:

25 Q. Dr. Berkowitz, you indicated that Dr. Tanner practiced or

1 developed his opinions in the '60s?

2 A. His first -- the article that I'm most familiar with
3 appeared in 1969.

4 Q. But his critique of the use of this type of methodology
5 appeared in 1998 in the Journal of Pediatric --

6 A. That's correct.

7 Q. It was not 1960?

8 A. No. His initial studies were 1969. He had subsequent
9 studies in the '70, '80s. And the letter was in the late '90s.

10 Q. So his critique is less than ten years old of this
11 particular methodology?

12 A. Of -- yes.

13 MR. BROWN: Thank you. I have no further questions.

14 THE COURT: Mr. Lulejian?

15 MR. LULEJIAN: Nothing further, Your Honor.

16 THE COURT: Thank you, doctor. You're excused.

17 Does the Government have another witness?

18 MR. LULEJIAN: Yes, Your Honor. The United States
19 calls Dave Stubblefield.

20 Dave Ross Stubblefield, Government's witness, was sworn

21 THE CLERK: Please have a seat. Please state and
22 spell your full name for the record.

23 THE WITNESS: Dave Ross Stubblefield.

24 THE COURT: Spell that, please.

25 THE WITNESS: Ma'am?

1 THE COURT: Would you spell that, please.

2 THE WITNESS: Oh, sure. S-T-U-U-B-B-L-E-F-I-E-L-D.

3 THE COURT: You may proceed.

4 MR. LULEJIAN: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. LULEJIAN:

7 Q. Good morning, sir.

8 A. Good morning.

9 Q. Are you familiar with the defendant, Michael Joseph Pepe?

10 A. Yes, sir, I am.

11 Q. How are you familiar with?

12 A. I am married to his ex-wife.

13 Q. For how many years?

14 A. Fifteen, 16.

15 Q. Would you please look around the courtroom and tell me
16 whether or not you see the defendant here today?

17 A. Yes, I do.

18 Q. Would you please identify an article of clothing that he is
19 wearing?

20 A. Dark charcoal coat.

21 Q. What kind of tie is he wearing?

22 MR. BROWN: Your Honor, we will stipulate.

23 THE COURT: Thank you.

24 Indicating the defendant Michael Pepe.

25 BY MR. LULEJIAN:

1 Q. During the time you have been married to his ex-wife, the
2 defendant's ex-wife, how many times have you interacted with the
3 defendant?

4 A. Fifteen, 20, something like that.

5 Q. Where have you interacted with the defendant?

6 A. At family events, graduations, weddings, things like that.

7 Q. Okay.

8 I want to talk about some of those events now.

9 Back in 2005, was there a family event or function the
10 defendant attended where you were present?

11 A. Yeah. Two of them.

12 Q. What was the first one?

13 A. His son's graduation from high school.

14 Q. When did his son's graduation take place?

15 A. Friday, May the 20th.

16 Q. And where was the graduation held?

17 A. It was held at the -- in Albuquerque at the pit. It's like
18 an arena thing for the university.

19 Q. Is that part of the University of New Mexico?

20 A. Yes, sir.

21 Q. And what, if anything, did the defendant do during the
22 graduation ceremony of his son?

23 A. He was up where we were for a little bit, and then he went
24 down lower to get better pictures. We were pretty far up.

25 Q. And how do you know that he was taking pictures?

1 A. He had a camera with him.

2 Q. Would you describe the camera?

3 A. It was a digital camera.

4 Q. Would you please take a look at what has been marked as
5 Government Exhibit 2098.

6 A. Yes.

7 Q. Is this camera similar to the one you saw him have?

8 A. Yes.

9 Q. You said there was a second event in 2005 in which you saw
10 Mr. Pepe -- the defendant at?

11 A. Yes, sir.

12 Q. And what was that?

13 A. That was his daughter's wedding.

14 Q. And what date was his daughter's wedding?

15 A. That was Saturday, August the 27th.

16 Q. Of 2005?

17 A. 2005, yes, sir.

18 Q. And what, if anything, did you see the defendant do during
19 the wedding?

20 A. We both had cameras and were taking lots of pictures. And
21 just eating and hanging out at the wedding and the reception.

22 Q. With respect to taking the pictures, did you see the
23 defendant take pictures?

24 A. Yes, sir.

25 Q. And what kind of camera was he using?

1 A. Digital one similar to that one.

2 Q. And did the two of you discuss anything about photography
3 at the wedding?

4 A. The wedding in general, and also we both talked about how
5 we liked digital cameras, because I had one, too, and they were
6 much cheaper to use than regular film.

7 MR. LULEJIAN: No further questions, Your Honor.

8 THE COURT: Cross-examination?

9 CROSS-EXAMINATION

10 BY MR. GUNN:

11 Q. Mr. Stubblefield, you don't recognize that exact camera;
12 right?

13 A. No. A camera like that.

14 Q. In fact, your recollection was that you thought the one
15 that Mr. Pepe had might have possibly be made by Kodak; correct?

16 A. Might have been.

17 Q. And you recall it being silver and black; right?

18 A. Yes, silver predominantly.

19 Q. And you recalled it being about the size of a pack of
20 cigarettes?

21 A. Well, a little bigger than that, but digital camera size,
22 yes.

23 MR. GUNN: No further questions.

24 THE COURT: Redirect?

25 MR. LULEJIAN: No.

1 THE COURT: Thank you, sir, you're excused.

2 Does the Government have another witness?

3 MR. LULEJIAN: We do, Your Honor. The Government
4 calls Bruce Pixley.

5 Bruce William Pixley, Government's witness, was sworn

6 THE CLERK: Please have a seat. Please state and
7 spell your full name for the record.

8 THE WITNESS: Bruce William Pixley. P-I-X-L-E-Y.

9 THE COURT: You may proceed.

10 DIRECT EXAMINATION

11 BY MR. LULEJIAN:

12 Q. Good morning, sir.

13 A. Good morning.

14 Q. What is your occupation?

15 A. I am a senior director for Aon Consulting, and I conduct
16 computer forensic examinations.

17 Q. What is a computer forensic examiner?

18 A. A computer forensic examiner is someone that analyzes --
19 for the most part we're probably known for analyzing computer
20 hard drives. Looking for evidence of files that have been
21 deleted. We also analyze optical media, thumb drives, pretty
22 much any type of electronic evidence that stores data.

23 Q. And at Aon Corporation -- Aon Consulting, what are your
24 responsibilities in addition to doing the things you just
25 described?

1 A. Well, I run the computer forensic unit for the western
2 United States.

3 Q. Okay.

4 And what does that entail?

5 A. Well, we have offices here in California -- Los Angeles,
6 Irvine, San Jose. We also have some examiners over on the East
7 Coast as well, but I primarily handle over here on the western
8 U.S. So engagements here in the western United States.

9 Q. And how long have you been employed at -- by Aon
10 Consulting?

11 A. It's been a little bit over two years now.

12 Q. Prior to joining Aon Consulting, what did you do?

13 A. Well, I was a master instructor -- well, prior to Aon, I
14 was with Kroll and conducted computer forensic examinations
15 while I was there.

16 Q. And before that?

17 A. Prior to that, I was a master instructor at Guidance
18 Software where I taught corporate and law enforcement
19 investigators how to conduct computer forensic examinations.

20 Q. What kind of software does Guidance Software produce?

21 A. Well, they are well-known for EnCase software, which is the
22 primary -- it's the primary forensic software that most
23 examiners, both law enforcement and corporate use around the
24 world.

25 Q. Did you have to go through some training to become a senior

1 instructor, master instructor?

2 A. Well, my training has mostly been through my experience. I
3 have attended classes prior to working for them full time. I
4 attended classes with the California Department of Justice. I
5 attended classes that Guidance Software put on where I attended
6 there as a student. But that's probably been -- my primary
7 training has been either through Guidance Software, California
8 Department of Justice, which are -- I was with the Santa Barbara
9 Sheriff's Department so I attended classes as a California peace
10 officer.

11 Q. How many years were you a California peace officer?

12 A. A little bit over 16.

13 Q. And what rank did you retire at?

14 A. I left the Sheriff's Department as a lieutenant.

15 Q. And when you were at the Sheriff's Department, did you have
16 the opportunity to do computer forensic analysis?

17 A. I did. I started in 1999 as a sergeant and we put together
18 our first computer crime unit, computer forensic unit as a
19 sergeant and handled looking for evidence of different types of
20 crimes, whether it be fraud or if a computer was involved in a
21 homicide investigation or a rape investigation. Any time that
22 computer evidence was involved in a crime, we were involved.

23 Q. Where did you go to school, sir?

24 A. I attended -- while I was at the Sheriff's Department I
25 attended classes through the University of Phoenix and I

1 finished my Bachelor's degree in Business Management.

2 Q. Since graduating from college, have you held any
3 certifications related to computers?

4 A. I do. I have -- as far as EnCase goes, I am an EnCase
5 certified examiner. I also have completed another certification
6 called the CISSP.

7 Q. What does that stand for?

8 A. Certified Information Systems Security Professional. And I
9 also have a certification as a Microsoft certified professional.

10 Q. You mentioned EnCase earlier. What do you have to do to
11 become a certified EnCase examiner?

12 A. Well, there's two parts. The first part is a written exam.
13 It's about 180 questions. And once you pass that, then there is
14 a practical exercise that takes about anywhere from 40 to 60
15 hours to complete.

16 Q. And when did you become certified in those?

17 A. I think it was back in 2002.

18 Q. Have you served on the faculty of any forensic training
19 programs?

20 A. I did. While I was at the Sheriff's Department as a
21 sergeant I started teaching for a California Department of
22 Justice. So when I started taking classes and building up my
23 skill set, I was asked to actually come in and teach. So what I
24 did was while I was working for the Sheriff's Department, I
25 taught sometimes maybe one to two times a month for the

1 California Department of Justice. And they're primarily
2 designed to teach California law enforcement computer forensics,
3 high-tech crime investigations and Internet investigations.

4 Q. Have you developed any recent classes?

5 A. I have. I still continue to teach for California
6 Department of Justice and develop classes for them in computer
7 forensics, network intrusion. And also when I was with Guidance
8 Software I developed courses and wrote training manuals for
9 them.

10 Q. Have you done any training or written anything in the area
11 of the forensic of optical media?

12 A. I have. With California Department of Justice, I recently
13 put together a new training program. It was about a -- a
14 six-hour training block on teaching California peace officers
15 who are forensic examiners how to conduct analysis of CD ROM
16 evidence, of optical disks.

17 Q. Have you ever testified in court in the field of -- as an
18 expert in the field of computer forensic?

19 A. I have. In the last five years I've testified about five
20 times. In federal court here in California, about three times.
21 And in federal court in the state of New York twice.

22 Q. Have you ever testified for the defense?

23 A. No, I have not.

24 Q. Why not?

25 A. I haven't been asked.

1 MR. LULEJIAN: Your Honor, the United States moves
2 Bruce Pixley be declared an expert in the field of computer
3 forensics.

4 MR. GUNN: No objection.

5 THE COURT: All right. I find he is an expert in that
6 field.

7 BY MR. LULEJIAN:

8 Q. Mr. Pixley, you told us a few minutes ago what a forensic
9 computer examiner does.

10 What kind of tools do you use when you analyze
11 computer media?

12 A. Well, there is a couple of forensic software programs such
13 as EnCase. AccessData also makes a forensic software package as
14 well. And there's some other tools. So we use different tools.
15 It's kind of like a mechanic where you have many tools in your
16 toolbox. Not one tool fits all. And so we use different
17 software programs to analyze electronic evidence.

18 Q. When you do an analysis, is it common to use only one or do
19 you use multiple tools?

20 A. Oh, I often use multiple tools.

21 Q. Do you have to improvise as you go along the way, sometimes
22 writing programs?

23 A. There are times where I will write different scripts, but
24 usually those scripts are designed within the software program
25 themselves to extract data.

1 Q. Now, when you analyze computer data, what steps do you take
2 to protect the integrity of the media that you're examining?

3 A. Well, the first thing we do when we go to image -- we use a
4 hard drive from a computer. The first thing we will do is take
5 the hard drive and attach it to a write block device because the
6 first rule of forensic evidence is cause no harm. You can't
7 make any kinds of alterations to the original evidence. So
8 we'll write-protect that evidence and then we'll make a forensic
9 image of that drive or whatever piece of media it is.

10 Q. And when you do the analysis, what do you work off of?

11 A. We work off the image, not the original evidence.

12 Q. Why is that?

13 A. Well, because if -- one, you never want anything to happen
14 to the original evidence. You want to put that away back in --
15 into evidence storage. So if something went wrong, you're
16 working off the image and, again, not the original.

17 Q. Have you been asked to analyze any computer media in
18 connection with this investigation?

19 A. I have. There were a couple of pieces of evidence.

20 Q. What did you examine?

21 A. One of had them was a 40-gigabyte hard drive from the
22 defendant's computer.

23 One of them was a thumb drive.

24 And then there were several optical disks that were
25 also involved.

1 MR. LULEJIAN: One moment, please, Your Honor.

2 At this point, Your Honor, I would like to read a
3 stipulation entered in by both the defense and the Government.

4 THE COURT: You may do that.

5 MR. LULEJIAN: "Plaintiff" --

6 THE COURT: Ladies and gentlemen, this is one of those
7 stipulations that you must accept as true.

8 MR. LULEJIAN: "Plaintiff, United States of America,
9 by and through its counsel of record, the United States
10 Attorney, and the defendant, Michael Joseph Pepe, by and through
11 his counsel of record, the Federal Public Defender's Office,
12 hereby stipulate they are using and have examined exact copies
13 of the following:

14 "One, an EnCase image of a Maxtor 40-gigabyte hard
15 drive in the computer taken from defendant Michael Joseph Pepe's
16 residence in Phnom Penh, Cambodia. This is Government Exhibit
17 Number 1275, and later prepared by U.S. Immigration and Customs
18 Enforcement Special Agent David Nguyen-Galante on or about
19 September 19th of 2006.

20 "Two, an EnCase image of a Transcend USB JetFlash
21 thumb drive provided to ICE by the Cambodia National Police
22 after the Cambodian National Police seized it from defendant
23 Michael Joseph Pepe's residence in Phnom Penh, Cambodia. This
24 is Government Exhibit No. 1276. And later prepared by ICE
25 Special Agent David Nguyen-Galante on or about September 19th of

1 2006.

2 "And No. 3, EnCase and/or ISO images of ten optical
3 disks designated by parties as CD1, CD2, CD3, CD5, CD7,
4 CD8, CD11, CD12, CD15, and CD18, seized from defendant Michael
5 Joseph Pepe's residence in Phnom Penh, Cambodia, designated as
6 Government Exhibit No. 1274, and later prepared by Bruce Pixley
7 on or about July 25th, 2007.

8 "The parties further stipulate that the exhibits
9 should be admitted into evidence."

10 THE COURT: All right. They will be admitted.

11 (Government's Exhibits 1274 through 1276 were received)

12 BY MR. LULEJIAN:

13 Q. Mr. Pixley, I have asked the agent to bring you Government
14 Exhibit No. 1274.

15 Do you recognize what is in that bag?

16 A. These would be the optical disks that I made images of.

17 Q. When you analyzed the hard drive, the thumb drive and the
18 CD's, where did you understand that the items came from?

19 A. From the defendant's residence.

20 Q. Okay.

21 And when you analyzed the -- those three groups of
22 media, what types of files, if any, did you discover on them?

23 A. Well --

24 MR. GUNN: Objection. Overbroad, vague and ambiguous.

25 THE COURT: Sustained.

1 MR. LULEJIAN: I will try to narrow it down.

2 THE COURT: I think you can ask a few leading
3 questions if will move things along.

4 BY MR. LULEJIAN:

5 Q. Okay.

6 Mr. Pixley, did you find digital photographs on that
7 media?

8 A. I did.

9 Q. Did you find electronic messages known as emails on that
10 media?

11 A. I did.

12 Q. Did you find an operating system on the email -- on the
13 computer?

14 A. I did.

15 Q. Did you find any software to download photographs on that
16 media?

17 A. I did.

18 Q. Okay.

19 At any point in time, did you reconstruct the
20 defendant's computer?

21 A. I did.

22 Q. Why did you do that?

23 A. Well, sometimes during an exam, it's -- you want to
24 actually test the computer for functionality. So what we'll do
25 is we'll take the image that we made of his hard drive and

1 restore it to a like hard drive, like making a working copy, and
2 taking that working copy hard drive, connect that to his
3 computer and then start up his computer. Again, we are using a
4 copy of the evidence but that way we can actually use his
5 computer in realtime and test the functionality.

6 Q. And did you do that in this case?

7 A. I did.

8 Q. And did you ultimately set it up so the defendant could use
9 that as well?

10 A. Yes, I did.

11 Q. All right.

12 Mr. Pixley, I am going to ask you to start with the
13 optical media -- and before we go into that, let's just cover
14 the basics.

15 What is optical media?

16 A. Well, most people know optical media as a CD ROM disk.

17 Q. What else is optical media?

18 A. Well, an optical media would be CDRW where -- there is CD
19 ROM where you can write one time to a disk. There is a CDRW
20 where you can read or write and delete files off of that disk.
21 And then a DVD would be an optical disk. So pretty much a
22 compressed piece of plastic that is used in your computer or
23 that you play music from is considered -- it's an optical disk.

24 Q. And Mr. Pixley, before coming to court today, did you
25 prepare some overheads to help you explain about optical disks

1 and other concepts?

2 A. I did.

3 MR. LULEJIAN: Your Honor, with the Court's
4 permission, I would like to display the pages that I have gotten
5 no objection from the defense.

6 THE COURT: We are about five minutes from a break.
7 Should we do now?

8 MR. LULEJIAN: Your Honor, it might be better if we
9 break now and then start fresh.

10 THE COURT: Ladies and gentlemen don't talk about the
11 case or form or express any opinions about the case until it's
12 finally submitted to you. We will take a 15 minute break.

13 (Recess taken)

14 (Jury In)

15 THE COURT: Everyone is present. The witness is back
16 on the stand. Sir you are still under oath.

17 You may continue.

18 MR. LULEJIAN: Would the Court ask Mr. Pierson,
19 please, to turn on the screen.

20 THE COURT: Sure.

21 BY MR. LULEJIAN:

22 Q. Mr. Pixley, right before the break I had asked you whether
23 you prepared a series of overheads to help talk about some of
24 the concepts that you are -- you are going to testify about
25 today.

1 Is this one of the overheads that you prepared?

2 A. Yes, it is.

3 Q. I think we were just talking about what an optical disk
4 was. Just so we are back on the same page, quickly tell us what
5 an optical disk is.

6 A. For what we are going to talk about here an optical disk is
7 a compact disk. And a compact disk is basically a -- it's
8 covered in plastic, and there's a reflective layer in the
9 middle. And a laser will read that reflective powder as a
10 reflective layer. And it's looking for pits inside of there.

11 And the best way to describe that is kind of how
12 someone who is -- who has a vision impairment that reads Braille
13 and reads the bumps on a piece of paper, the laser is reading
14 the bumps on that reflective layer.

15 And so what an optical disk has is, it's kind of just
16 an old record player -- the old record, the old LP's, where you
17 put the needle on the outside and it spins, and eventually it
18 ends in the middle. Well, an optical disk works in the opposite
19 way. It starts from the middle and spirals out. And there's a
20 single track that starts from the middle and spirals out. And
21 just to get an idea, that spiral -- if you were to stretch out
22 that spiral, it's about three miles long. So it holds a
23 significant amount of data.

24 Q. And what kind of data can you store on there?

25 A. Well, you can store anything from music to maybe a movie

1 file, depending on the format, or digital photographs, Word
2 documents, Excel.

3 Q. What does the term CDRW mean?

4 A. That stands for what is a -- what's known as a compact disk
5 that's rewriteable. And that means that not only can you -- you
6 can reuse that disk, and it works kind of like a hard drive
7 where you can write files to it and you can delete files from
8 it.

9 Q. How does one write to the CD? You are talking about the
10 laser. How does the actual data go and how is it stored?

11 A. Well, in this example here, what will happen is let's say
12 you want to copy multiple files onto this disk. And so I
13 represented here is you are copying files and it starts from the
14 middle and it starts writing data as it starts spiraling out and
15 keeps adding one file after the next in succession.

16 Q. How does it -- how do you know where the files are?

17 A. Well, and part of what a compact disk does is it maintains
18 a table of contents, just like a book has a table of contents.
19 And in the table of contents there is the name of the file, the
20 date of the file, and exactly where is that -- where is that
21 file located. Just like in the table of contents. If I want to
22 go to Chapter 7, it will tell me Chapter 7 starts at page 57, so
23 I can jump ahead to Page 57 and start.

24 Q. If I am looking for a specific file, say I am looking for
25 Vacation 4, the computer will look at the table of contents and

1 look at where that table points to and then go to that file?

2 A. Absolutely. That happens behind the scenes. You are
3 interested in "I want a specific file." The computer just knows
4 where to look. It reads the -- it reads the table of contents.

5 Q. Sorry. I will try not to step on top of you again.

6 So if it happens behind the scenes -- for example, I
7 opened up a document in, say, Word and I saw the listing there
8 and I clicked on a file, would this table of contents then tell
9 the computer where to go to retrieve my documents?

10 A. If you were using Word and you told Word to read that disk,
11 it would read the table of contents and it would know where to
12 find that file.

13 Q. What happens if I delete the file? What happens then?

14 A. Well, because it's a CDRW, you have the option of deleting
15 files because it -- you can read and write to it multiple times.
16 So in this example, what I did here -- and the last table of
17 contents I show vacation pictures, Vacation 1 through 5.JPG, as
18 digital photographs, and that's just as a representation.

19 So in this example, what I did here is I deleted the
20 first four files. But when you delete a file on a CDRW disk,
21 you're not deleting the file itself. All you're really doing is
22 going to the table of contents and erasing that. Just as if you
23 were to go to a book and say Chapter 1 is not there. Chapter 2,
24 not there. You're deleting the pointers to where that stuff is.
25 However, those files still exist.

1 So what we see on the screen up there is where we see
2 one file is left, Vacation 5, it's in green. The previous four
3 files, which are in the wide yellow band, those files are still
4 there. Just as in a book. Just because you go to the table of
5 contents and you erase Chapter 1 out of the table of contents,
6 if you flip ahead you could still find Chapter 1 in that book.

7 Q. So what can you as a forensic examiner do to locate those
8 files?

9 A. Well, forensic software gives us the -- we have the ability
10 to actually go in and start searching for Chapter 1 and Chapter
11 2. And so it's equivalent of if you were just to open that book
12 and you flipped through and you looked for Chapter 1 and you
13 turned to Page -- say it started at Page 5 -- and you turned to
14 Page 5 and it said at the top Chapter 1 and you kind of flipped
15 ahead and you go, oh, there is Chapter 2. Well, I bet between
16 Chapter 1 and the page right before Chapter 2, that looks like I
17 have all of Chapter 1, and you can take those pages out.

18 Well, we do the same thing in computer forensics. We
19 find the beginning of the file, the end of the file -- and again
20 this is deleted, a deleted file -- and we extract that out.

21 Now, there's one thing that you're going to hear
22 later, and when you delete files from a hard drive or from an
23 optical disk, those files are then considered in the unallocated
24 space. And basically what that means is there's nothing in the
25 table of contents that points to those files. The data is still

1 there but now it's unallocated.

2 Q. Is there a certain point in time where data on unallocated
3 space is gone forever?

4 A. Well, eventually with a CDRW, is if you were to continue to
5 add files to this disk, the files don't start over-writing where
6 the yellow is. If you were to add more files, like Vacation 6
7 and 7 and maybe some other documents, it would continue on that
8 spiral. When the disk was full, then it would go back and start
9 using the first part of the area where you deleted those files.
10 Once you overwrite that data with new data, then we cannot
11 recover the data once it's been overwritten.

12 Q. Mr. Pixley, when you examined CD 1, what type of files did
13 you find on there?

14 A. Digital photographs.

15 Q. Let's talk about digital photography a little bit.

16 A. Okay.

17 Q. What is a digital photograph?

18 A. Well, a digital photograph, you use a digital camera, it
19 takes a digital photograph. So instead of where it would store
20 it on film, it's actually storing it on a media card instead
21 that's attached to the camera or plugged into the camera.

22 So in this example here, I used a digital -- I used a
23 Minolta digital camera to take a photograph. Now, inside that
24 photograph, when you take that picture, there's a couple of
25 things that are actually stored in that picture.

1 One, the picture stores information about the make and
2 model of that camera, the date and time of when that picture was
3 taken, and there's some other settings. There's also a
4 thumbnail image of the full-size picture and then the full-size
5 picture itself.

6 Q. Let's break that down a little bit. You have thrown a lot
7 at us. When you say it's stored on certain type of digital
8 media, what are the common types of media that one would store
9 the photograph on after you take it on the camera?

10 A. Well, there's -- one of them would be a compact flash card.
11 There's SD cards, there's XD cards. There's different types of
12 media cards and it really depends on the camera manufacturer
13 what type of media card you used for that camera.

14 Q. Do the media cards all do the same thing though?

15 A. In essence, yes, they do. They are just different sizes
16 but they still store data.

17 Q. Now, you used the term "thumbnail" a few minutes ago.

18 What is a thumbnail?

19 A. Well, just like in this representation here, you have a
20 full-size picture, which is the picture on the bottom, and then
21 a thumbnail image, which is the same photograph but much
22 smaller. And so the thumbnail image, and the reason why it's
23 there on a digital camera -- and for those of you who have
24 digital cameras, if you ever look in the LCD view screen in the
25 back, you can actually look at the pictures you took. Well,

1 that's because the camera is looking at the smaller thumbnail
2 version instead of the full-size version.

3 Q. Who took this photograph?

4 A. I took that photograph.

5 Q. And what kind of camera did you use?

6 A. I used a Minolta Dimage S414 camera.

7 Q. Would you please take a look at Government Exhibit
8 No. 2096. It's a physical exhibit.

9 THE COURT: I don't think -- he is looking in book --
10 BY MR. LULEJIAN:

11 Q. Mr. Pixley, the agent will bring it up to you. I'm sorry.
12 Is there a bag with a camera up there by chance?

13 A. Yes.

14 Q. Sorry. Okay.

15 A. This is 2098.

16 Q. 2098? I'm sorry.

17 Okay. And what is 2098?

18 A. 2098 is the -- is the Minolta digital camera that I used to
19 take this picture.

20 MR. LULEJIAN: Your Honor, the Government would move
21 2098 into evidence.

22 MR. GUNN: I would look for the foundation about where
23 it came from, Your Honor. The objection is to --

24 THE COURT: Based on what I have heard so far, I don't
25 see why you would put it into evidence.

1 MR. LULEJIAN: All right.

2 Q. Mr. Pixley, you took a number of pictures with that camera?

3 A. I did.

4 Q. And is this one of those photographs?

5 A. Yes, it is.

6 Q. Okay.

7 I notice on this photograph there is a date and a time
8 stamp associated with it.

9 How's that date and time set?

10 A. Well, the camera sets that date and time, which means that
11 the user has to set the date and time. In this case, when I
12 took this picture, I intentionally set the date wrong. I took
13 this picture on February 17th of this year. But if you look at
14 the picture, the camera is doing exactly what it was supposed to
15 do. I set the camera date to August 16th of '07. So the camera
16 will embed the date and time of whatever the user sets on that
17 camera.

18 Q. Okay.

19 I also notice that next to the title "Digital
20 Photograph" there is a phrase "PICT 0001.JPG."

21 What does that mean?

22 A. Well, that's the first picture that this camera took. And
23 that's the way Minolta -- this specific camera stores pictures.
24 Each digital camera has to give the picture a file name so it
25 can be retrieved. And so this camera uses this naming

1 convention to store the pictures. So the next picture would be
2 PICT 0002.JPG.

3 Q. What is JPG?

4 A. That is for -- for JPEG, and I -- I can't remember the
5 acronym that's used for JPEG right off the top of my head.

6 Q. What is a JPEG?

7 A. A JPEG is a digital image such as in the case of this, a
8 digital photograph. It's the format and the way that the
9 picture is stored. So a digital camera uses a specific format
10 and that format that's standard that was created by the -- by
11 the -- by the community, because it is a standard that all
12 camera manufacturers will use, says that inside this file, which
13 is framed by the box that you see up there, it says that you
14 will embed this information and a thumbnail and the full-size
15 picture in this format.

16 Q. So in other words the type of extension, the type of format
17 it is tells the computer how to read the data so it can display
18 the picture?

19 A. Exactly. So it knows how to handle that picture.

20 Q. Okay.

21 And what other types of formats would we have heard
22 of?

23 A. Well, primarily with digital pictures, you're using JPEG is
24 the standard.

25 Q. Is the time on that camera in military time or is it in

1 civilian time?

2 A. I believe it's done in military time.

3 Q. Now, you said a few minutes ago that if you don't set the
4 time right, pictures will be off, similar to the one you have
5 got there.

6 A. Exactly. So what happened here is I took some pictures on
7 February 17th. I took some pictures on February 19th. And the
8 date was still off on pictures on both of those days.

9 Q. So if you went back to review those picture, say, a year
10 later, what would you find?

11 A. Well, you would go back and you would see the date that the
12 camera stored in there.

13 Q. So the date that is on the photograph may not actually be
14 the date the photograph was taken?

15 A. Correct.

16 Q. Now, you testified earlier that prior to -- before you came
17 to court today, you examined the hard drive.

18 A. Yes.

19 Q. Thumb drive, and a number of compact disks or optical disks
20 that came from the defendant's residence in Phnom Penh. And you
21 also talked about the kind of information that you pulled off of
22 those.

23 What I would like to ask you is approximately how many
24 photographs did you come across? In the hard drive, the thumb
25 drive, and -- I am only talking about two of the compact disks,

1 Compact Disk 1 and 15.

2 A. Well, we would be into the hundreds, if not thousands, of
3 images.

4 Q. And if you were to classify those types of images, what
5 categories of images would they be?

6 A. Well, I have seen everything from regular photographs or
7 I've seen photographs that were -- would be considered
8 pornography. I've seen images that would be non-pornography.
9 I've seen images that were pictures that were from the Internet.

10 Q. What I would like to focus on today, Mr. Pixley, is the
11 pictures that are pornographic and non-pornographic.

12 When you take the pictures and they're stored on the
13 media at the compact flash card, how does it get from the
14 compact flash card to one's computer?

15 A. Well, there's a couple different methods that you can use.
16 One is somebody could remove the compact flash card and insert
17 it into a reader in their computer to transfer the pictures.

18 Another method is just to take a cable, like a USB
19 cable, and attach that to the computer and hook that cable
20 directly to the camera itself and transfer the pictures that
21 way.

22 Q. And how does the computer know to transfer the pictures?

23 A. Well, there's -- typically, if you have it set up right,
24 you will have software installed on your computer so when you
25 attach a media card or you attach a camera, the software detects

1 that the card or the camera has been attached and then prompts
2 the user, what do you want me to do with these pictures.

3 Q. And did you find any such software when you examined the
4 hard drive of the Mr. Pepe's -- of the defendant's computer?

5 A. I did.

6 Q. What was that program?

7 A. This program was called Nero PhotoShow Express.

8 Q. Mr. Pixley, would you please look at Government
9 Exhibit 1277.

10 A. Yes.

11 Q. What is that?

12 A. It is the quick start guide for Nero 6 Ultra Edition.

13 Q. And is that the same program that you found on Mr. Pepe's
14 -- on the defendant's computer?

15 A. I did. This is -- this is the software.

16 Q. Now, have you had an opportunity before coming to court
17 today to try out Nero PhotoShow Express?

18 A. I did.

19 Q. And would you please explain to us the steps in which the
20 photographs are transferred from the time you plug it into the
21 computer, the camera into the computer?

22 A. Again, what I used is this digital camera that I previously
23 had in my hands here. And then using the defendant's computer
24 with the restored hard drive that I attached there, I connected
25 the memory card, the compact flash card, to the computer and

1 Nero PhotoShow Express popped up and said, "I detected pictures
2 on this card. Do you want to put them into PhotoShow now?"

3 Q. And what did you do, sir?

4 A. At this point you would click "Yes."

5 Q. What happens next?

6 A. What happens here is that the software program reads the
7 memory card, the thumbnail images, and displays them in this
8 software. And then at this point, you can choose to select all
9 the images. In this case, they're already all selected. And
10 it's prompting you to add these photos to either a new album or
11 an existing album. So what I did in this case, I would click
12 "Go" to select -- I want these added to a new album.

13 Q. Is this the screen you were prompted with?

14 A. It is. Now, in this case you are then prompted to name the
15 album. Now, to be consistent with some of the folders that I
16 saw on the defendant's hard drive, I used the same naming
17 convention that I saw, and since I took pictures of a ranch, I
18 called my album Ranch 021708, because that's when I took the
19 first part of the pictures.

20 But you will also notice that the PhotoShow Express,
21 as it reads that first picture and kind of displays it there, it
22 gives an album date of 8/16/2007. It's because it's actually
23 reading the first picture, reading the information embedded in
24 there saying, hey, the date of this picture is August 16th,
25 2007.

1 Q. All right.

2 What did you do to go to the next screen?

3 A. At this point you just click "Okay."

4 Q. Then what do you see?

5 A. Then what it does is it copies all the pictures off the
6 media card to the hard drive and then displays not only the
7 album that you just added, but the other albums that you have on
8 the hard drive.

9 Q. All right.

10 Let's talk about that copying process, Mr. Pixley.

11 A. Okay.

12 Q. When you say the pictures are copied off the camera onto
13 the computer, where do they go?

14 A. Well, they are transferred to a folder on the hard drive.
15 So in this case, on -- just to kind of lay the foundation, this
16 computer was running Windows XP as the operating system. And
17 every user on that computer has a user profile. So in this case
18 on the defendant's computer, the name of the profile was
19 Michael.

20 Q. And is this what the file structure looks like in basic
21 terms on the 40-gigabyte hard drive?

22 A. Well, yes, but it's not listing all the folders that are
23 there. It's specific to what we're talking about here. As far
24 as the first folder structure, if we read down where it says,
25 "Michael, application data, ahead, PSD image database, cache"

1 and then "albums."

2 Q. And what does "cache" mean?

3 A. Cache is just a folder name that PhotoShow Deluxe or
4 PhotoShow Express uses to store all of the thumbnail images that
5 we saw in the previous screen. So all those thumbnails that we
6 can quickly identify pictures are stored in the "Albums" folder.

7 Q. Thumbnails again are the little versions of the pictures?

8 A. Are the small pictures. So underneath the cache "Albums"
9 folder it will create a new sub-folder that's consistent with
10 whatever you name the album. Like I named my album Ranch
11 021708, so there will be a thumbnail folder that will have all
12 the thumbnail images in there.

13 Q. And is a folder created with just the name of the album you
14 have or does the PhotoShow Deluxe add something else to the file
15 name?

16 A. Well, every album that you add to PhotoShow Deluxe, it --
17 it pre-pens the name of your album with a number. So if you had
18 21 albums, you're going to have albums listed 1 through 21 and
19 then after the number would be the name of the album.

20 Q. Are those numbers sequential?

21 A. They are sequential. So every album gets a new number.
22 The next incremental number is added.

23 Q. So it would be the number and then the name of the album?

24 A. Yes.

25 Q. And it will be sequential from the time you started at the

1 beginning until you ended?

2 A. Correct.

3 Q. Where else -- well, you explained how the thumbnails get to
4 the computer.

5 How about the actual pictures themselves?

6 A. If we look down a little bit below that, we see the
7 "My Documents" folder. Now, people who use a Windows computer
8 are probably familiar with the "My Documents" folder. And
9 within the "My Documents" folder there is a "My Pictures"
10 folder. PhotoShow Express takes all of the full-size pictures,
11 creates a new sub-folder underneath "My Pictures," names the
12 folder whatever you named the album and puts all of the
13 full-size pictures into that folder.

14 Q. So we have got the full-size pictures in a folder under "My
15 Pictures" with the album name, and we've got the thumbnails in a
16 sub-directory of the PSD image database cache "Albums" structure
17 with that name?

18 A. Correct. In addition to the thumbnail album folder, there
19 is also a text file in there that lists -- inside this text file
20 it lists the names of all the images, of all the thumbnail
21 images and the full-size images, and the date and time that
22 those pictures were taken, to keep track of this stuff.

23 Q. All right.

24 Now, you said in the thumbnails folder, the "Albums"
25 folder, there's a number that the computer program generates

1 before the name of the album.

2 Do you see that same number in the folder that appears
3 for the full-size ones in my pictures?

4 A. No. It will actually be the name of whatever you name the
5 album. So in my example, I had Ranch 021708. That will be the
6 name of the folder underneath "My Pictures."

7 Q. All right.

8 Mr. Pixley, I always run out of space on my computer
9 and have to delete programs. If I wanted to delete pictures
10 using this program or using this structure, where would I go to
11 clear up some space?

12 A. If you wanted to clear up pictures, you would actually go
13 into the "My Pictures" folder, and from there you would start
14 deleting pictures. You can delete the entire folder or just
15 individual pictures.

16 Q. So let's say I wanted to get rid of the ranch folder that
17 you created. It's taking up too much space or I just don't want
18 it anymore.

19 What would I do to get rid of the folder in "My
20 Documents" or "My Pictures" directory?

21 A. You would highlight that folder inside of "My Pictures" and
22 click "delete" which would then move that folder to your recycle
23 bin.

24 Q. What is the recycle bin?

25 A. Well, Windows uses a recycle bin that when you delete

1 files, it's a temporary place that Windows will store those
2 files in case you accidentally delete something. So in this
3 example -- and although it looks kind of cryptic, we see a
4 folder down below called Recycler. Now, that's the name of the
5 folder that Windows uses.

6 Now, as a Windows user, you're not normally going to
7 see a Recycler. It's hidden folder. You will see it called
8 Recycle Bin. And then there is two sub-folders below that. One
9 is N Protect and the other is a very long string of numbers.
10 Every user -- that long string of numbers is associated to the
11 user. So as a user, you wouldn't see that either. That's kind
12 of a hidden folder. You just see it as Recycle Bin.

13 Q. So when I drag my files into the trash can that's on my
14 desktop, the Recycler is where it goes?

15 A. Yes, it is.

16 Q. Okay.

17 What happens if I make a mistake and I realize oh, I
18 need to get them back? Can I do so?

19 A. You can. You can go into the Recycle bin. You can then
20 right click on that folder and select "Restore," and it will put
21 it back into the "My Pictures" folders, because the operating
22 system keeps track of where was it when you deleted it.

23 Q. What happens if I empty the trash and the Recycler is
24 emptied? Can I still get my pictures back?

25 A. Well, not without some special software, and also not if

1 those pictures have been overwritten.

2 Q. Okay.

3 Just assume that I don't overwrite. I just delete
4 them. Where do the pictures go?

5 A. Well, in this case, now that you've deleted them, now
6 they're on unallocated space. So just like when we talked about
7 on the CD ROM where you delete pictures that are unallocated,
8 again, all we are saying is that the table of contents no longer
9 has a pointer to those files. They can still be recovered
10 possibly if they haven't been overwritten, but unallocated just
11 means there is no longer a table of contents entry saying where
12 they are.

13 Q. So I delete the Ranch folder, I put it in the Recycler, I
14 empty the Recycler, and those photographs no longer appear in
15 the "My Pictures" directory; they go to unallocated space?

16 A. They would then be in the unallocated space of the drive,
17 yes.

18 Q. Have I gotten rid of all the pictures from that file then?

19 A. No. Just because you go into the "My Pictures" folder and
20 delete the actual folder containing the full-size images, the
21 thumbnails are still in the "Albums" folder. And really unless
22 you knew where to look, you're probably not even going to know
23 that they are there to drill down into that folder structure,
24 find it and delete them there as well.

25 Q. So the second copy of those pictures still exists?

1 A. The thumbnail version of those pictures exist along with
2 the info text file that keeps track of when those pictures were
3 added.

4 Q. Now, as a forensic examiner, what does that fact allow you
5 to do?

6 A. Well, if I was to go -- like in this case I would go look
7 at the cache "Albums" folder and all the thumbnail images and
8 look at all the albums. From there, now that I can see all the
9 albums that are there, I would then look at the "My Pictures"
10 folder to see if those albums are still there.

11 I can also use those thumbnail images if I find the
12 pictures someplace else to get an idea of when did they first
13 come on the hard drive, what was the date and time stamp of
14 those pictures as well.

15 Q. If you could explain to us what you do if you manually want
16 to get rid of pictures through DOS. Does the Photoshop
17 Deluxe -- does the photo program NERO allow you to delete
18 within?

19 A. It does. It does have a trash can function. But I found
20 that if you delete the thumbnails -- like if you say I do not
21 want this album anymore, it will delete the album, although I
22 found it doesn't do it very well because I can still see the
23 album if I go and look for it. But it does not touch the "My
24 Pictures" folder. So they're completely independent of each
25 other.

1 Q. So if you wanted to completely wipe it off the hard drive,
2 you would have to either delete the album in the "Albums" folder
3 and then delete the folder in the "My Pictures" folder or run
4 the NERO program, delete the albums; the album within that
5 program, then manually remove the pictures using DOS from the
6 "My Pictures" folder?

7 A. Right. You would have to go to both places. Then you
8 would have to go to the recycle bin and empty that. Another
9 option, too, when you delete images -- when you click -- like in
10 the example we used where you deleted a whole folder, when you
11 hit "delete," it will send that folder to the recycle bin.

12 Another way to delete is if you hold down the shift
13 key and hit "delete," it will delete it and it bypasses the
14 recycle bin. So then you wouldn't -- then you would not, as a
15 user, be able to say, "Oh, I need to restore that." You have
16 bypassed the function of the recycle bin.

17 Q. But it still puts it in the unallocated space?

18 A. It is still in the unallocated space of the hard drive,
19 yes.

20 Q. So even though you have gone through these steps of
21 removing thumbnails, removing pictures, the digital fingerprints
22 of what you did still remain?

23 A. The data of those files still remain.

24 Q. And as a forensic examiner, what can you do with that
25 information?

1 A. Well, what I would do is I can go through the hard drive
2 and try to recover deleted pictures from the hard drive, finding
3 those Chapters 1, 5, 7, because I know what the beginning of a
4 picture looks like. It has a unique signature. I know what the
5 end of that picture looks like so I can go through and find that
6 and extract it out of the hard drive and restore it.

7 And then from there -- and as we saw in this CD ROM,
8 when we delete a file and we don't have an entry in the table of
9 contents, when it's an unallocated space, I don't know what the
10 name of that file is anymore.

11 So what I would do in that case is I would probably go
12 -- like in the example here, I could go find the thumbnail, the
13 matching thumbnail that goes with it, using that info text file
14 that says this is the camera, this is the date. And then from
15 there I could find the name of that picture and what file it was
16 originally stored in the "My Pictures" folder.

17 Q. Mr. Pixley, I'm going to now shift away from the abstract
18 and actually turn to the files that you recovered from
19 Mr. Pepe's computer and from his CD's. Let's start with the
20 non-pornographic images.

21 Before you came to court today, did you examine
22 Exhibits No. 1299 through 1308, Exhibits 1332 through 1356 and
23 1358 through 1404?

24 A. I did.

25 Q. And what were you able to learn by looking at all of these

1 photographs?

2 A. Well, those pictures --

3 Q. Let me first -- that is a very broad question.

4 A. Okay.

5 Q. Were you able to tell what camera or cameras took those
6 pictures?

7 A. Oh, from -- yes, I was.

8 Q. And what camera was that?

9 A. All of those pictures were taken with the same camera, a
10 Minolta Dimage S414 camera.

11 Q. That's the same camera that you purchased for your
12 experiment?

13 A. Yes, it is.

14 THE COURT: You mean the same model or the same --

15 MR. LULEJIAN: Same model. Thank you, Your Honor.

16 Q. And what else did you discover about the photographs,
17 specifically with respect to the dates?

18 A. Well, what I found is -- and again, looking at those
19 pictures and some of the other references from the hard drive,
20 that the dates appeared to be off.

21 Q. How did you reach that conclusion?

22 A. Well, what I did is I started looking at the dates of the
23 pictures and looked at names of the folders. I started looking
24 for known events and names of the folders where these pictures
25 may have been stored, and trying to do a comparison between the

1 dates of the folders or these known events to try to figure is
2 the date off and if it is off, by how much is that date off.

3 Q. And what did you find?

4 A. That the average, based on looking at several folders --
5 I've looked at, I want to say, more than 12, 13 folders, and
6 kind of built this out -- that the average offset of the date
7 was by 185 days.

8 Q. Mr. Pixley, specifically what types of events were you
9 looking for?

10 A. Well, you would look for known events. Where it might be a
11 graduation ceremony, a wedding, Christmas, Valentine's day,
12 where I could see the date of the -- the name of the folder
13 itself where the user would have named the folder, just like I
14 created that folder Ranch 021708. So I would use that date as a
15 reference to try to get an idea of the offset.

16 Q. Okay.

17 You mentioned graduations. Did you find any
18 graduation pictures on the computer?

19 A. I did.

20 Q. Okay.

21 And do you remember what the date that the camera put
22 with those pictures for the graduation was?

23 A. Not off the top of my head am I going to remember that.

24 Q. Did you actually at one point learn when the actual
25 graduation ceremony was?

1 A. I did.

2 Q. And did that graduation ceremony take place in 2005?

3 A. It did.

4 Q. And did you also see photographs of a wedding that took
5 place in 2005?

6 A. I did.

7 Q. And at a later time, did you learn the dates of those --
8 the date the wedding actually took place?

9 A. I did.

10 Q. And did that go into your determination that the
11 photographs were off by 185 days?

12 A. That was part of it, yes.

13 Q. You mentioned about Christmastime.

14 Did you find any photographs that appeared to be taken
15 at Christmas?

16 A. I did. There was one folder that sticks with me as a
17 folder identified as "Christmas 2005."

18 Q. I am going to show you a photograph. This has already been
19 admitted into evidence so with Your Honor's permission I will
20 put it up on the overhead.

21 THE COURT: Sure.

22 MR. LULEJIAN: This is Exhibit No. 1372.

23 Is this one of the photographs that you found?

24 A. Yes, it is.

25 Q. Where did you find it?

1 A. This looks like the one that came from the "Christmas 2005"
2 folder.

3 Q. And is this one of the photographs you used to determine
4 that the camera was off?

5 A. Yes.

6 Q. Approximately how many days off was it, based on this
7 photograph?

8 A. Well, 185 days.

9 Q. Do you remember the date that the camera associated with
10 photograph?

11 A. I don't remember the date but I know when I did the
12 calculation and added 185 days, it would show that this picture
13 was actually taken on December 25th, 2005.

14 MR. LULEJIAN: Your Honor, at this point the
15 Government would move Exhibits 1299 through 1308, Exhibits 1332
16 through 1356, and 1358 through 1404 into evidence.

17 MR. GUNN: No objection at this time, Your Honor,
18 subject to possibly raising individualized issues later as they
19 arise.

20 THE COURT: All right. Admitted.
21 (Government's Exhibits 1299 through 1308; 1332 through 1356;
22 1358 through 1404 were received)

23 BY MR. LULEJIAN:

24 Q. That was a large body of exhibits.

25 And you personally analyzed or examined all of those

1 exhibits?

2 A. I did. I went through each of those individually.

3 Q. And have you done anything to condense the information,
4 specifically with respect to dates and locations of those
5 files -- let me rephrase. It's a very poor question.

6 Have you summarized the information on any document?

7 A. I did.

8 Q. I am going to show you what has been marked as Government's
9 Exhibit 2093? Do you have that in front of you?

10 A. Yes, I do.

11 Q. And what is this document?

12 A. This is titled "Summary of non-pornographic digital
13 photographs."

14 Q. And what did you do to put this document together?

15 A. What I did is I went through all the exhibits and listed
16 where were those exhibits located, whether they were on the
17 compact disk or they came from the hard drive.

18 I looked at the camera date embedded in each of these
19 photographs, and then I also added the calculation of 185 days
20 to show the -- what I believed to be the actual date that those
21 photographs were taken.

22 Q. And did you cross-reference that with the exhibit numbers?

23 A. I did. And the third column shows the exhibit numbers.

24 MR. LULEJIAN: Your Honor, the Government would offer
25 this as summary exhibit.

1 THE COURT: Any objection?

2 MR. GUNN: No, objection, Your Honor.

3 THE COURT: That comes in.

4 (Government's Exhibit 2093 was received)

5 MR. LULEJIAN: May I publish?

6 THE COURT: Yes.

7 BY MR. LULEJIAN:

8 Q. Mr. Pixley, is this the chart?

9 A. Yes, it is.

10 Q. Now that the jury has it in front of them, let's talk about
11 the first column, "Media Folders."

12 What were the three pieces of media that -- that have
13 the -- that you used to create this chart?

14 A. Well, there's three here. One is CD 1, which is one of
15 these CD's up here in this stack. Another is CD 15, which would
16 also be in this stack. And then below that would be the album
17 which would have been from the hard drive, from the -- this
18 would be from the "My Pictures" folder.

19 Q. Okay.

20 And the second column, that's the "Camera Date."

21 Is that the embedded date or is that another date?

22 A. That's the embedded date that the camera stored inside each
23 picture.

24 Q. And the third column, is that the adjusted date based on
25 your calculations?

1 A. Yes. That is taking -- like in the first example here of
2 June 2nd, 2005, adding 195 days, which would make it December
3 4th, 2005.

4 Q. And does this correspond with an exhibit number?

5 A. It does. With the range of exhibit numbers that fit. So
6 in this first one where it shows on CD 1 there was folder called
7 "Four Girls" and so in there were two exhibits, 1299 and 1300.
8 And so those two exhibit numbers are the range of exhibit
9 numbers -- or if there's just one -- refer to everything that
10 was found in that folder that's listed as an exhibit.

11 Q. So if we were to put a photograph out there for you, would
12 you be able to use this chart to determine where it came from,
13 what its exhibit number was and what the date was?

14 A. Yes. And that's why I built this.

15 Q. Okay.

16 Let's try with an example. I am going to show you
17 what's been already been admitted into evidence as Government's
18 Exhibit 1332.

19 Do you recognize this picture?

20 A. Oh, yes, I do.

21 Q. Let's put your chart up. If I wanted to know when this
22 photograph was -- actually where the photograph came from, where
23 do I go?

24 A. You would go down the last column under "Exhibit Number" --

25 Q. Right here?

1 A. Yes. And you will actually see towards the bottom there is
2 an individual Exhibit 1332. Then as you go across to the first
3 column, you would see that that picture came from a folder
4 called "New Year Girls." The camera, when it took that picture,
5 was set to October 14th, 2005. Then in the next column, if you
6 add 185 days, the actual date of that picture was taken on
7 April 17th, 2006.

8 Q. And we could do that with any photograph that is in this
9 exhibit list?

10 A. Yes.

11 Q. Now, did you prepare another chart entitled Government's
12 Exhibit 2094?

13 A. Yes, I did.

14 Q. Okay.

15 And what is that chart?

16 A. Well, this is taking the same exhibit numbers but breaking
17 it down by month in a more chronological order. So this will
18 show the month that the -- that the pictures were actually taken
19 based on the 185 day offset and then the exhibit number
20 associated with it.

21 Q. Okay.

22 And again this is from a summary of all the
23 information from those exhibits?

24 A. Yes. It is built as an extension to this summary that
25 you -- that we have up in front of us now.

1 MR. LULEJIAN: Your Honor, the Government would offer
2 2094 into evidence.

3 MR. GUNN: No objection.

4 THE COURT: That will come in.

5 (Government's Exhibit 2094 was received)

6 BY MR. LULEJIAN:

7 Q. Mr. Pixley; is this the chart that you prepared?

8 A. Yes, it is.

9 Q. So if I -- the -- if I wanted to, say, find that Picture
10 1332, the one I just displayed for you, I could look on this
11 chart and determine what?

12 A. Well, you would go down the exhibit number and you would
13 see that exhibit by itself and then you would see that that
14 would fit into the range of April 2006.

15 Q. This chart is basically a tool to help you organize the
16 pictures chronologically?

17 A. Yes.

18 Q. Let's do that with a real life example.

19 MR. LULEJIAN: Your Honor, I have just conferred with
20 counsel. I would like to display Exhibits No. 13 -- actually,
21 let me ask Mr. Pixley first.

22 Q. Mr. Pixley, have you examined Government's Exhibit Nos.
23 1339 and 1340?

24 A. Yes, I have.

25 Q. And were those photographs retrieved as part of your

1 analysis?

2 A. Yes.

3 MR. LULEJIAN: Okay. Your Honor, I would
4 ask permission -- I would move to offer Exhibits 1339 and 1340
5 into evidence.

6 THE COURT: Any objection?

7 MR. GUNN: No, Your Honor.

8 THE COURT: Those are admitted. Thank you.

9 (Government's Exhibits 1339 and 1340 were received)

10 BY MR. LULEJIAN:

11 Q. Is this one of these pictures you examined?

12 A. Yes, it is.

13 Q. This is Exhibit No. 1339? 1339; is that correct?

14 A. I don't see a number, but if you're telling me.

15 Q. I will tell you. This is Exhibit No. 1340.

16 A. Okay.

17 Q. So if I wanted to know when these pictures were taken using
18 the two summary charts you prepared, what would I do?

19 A. Well, you would go down the exhibit number again and find
20 the matching exhibit number to the month range that that fits
21 into.

22 Q. Let's start with the month range first.

23 So we're looking for 1339 and 1340. Down here,
24 Mr. Pixley.

25 A. There we go. Thank you. This would be in April 2006 in a

1 folder named "Girls 042706."

2 Q. And if I wanted more detail, what could I learn from the
3 other chart?

4 A. Well, by looking at the other chart, I guess you could from
5 there tell that this was an "Albums" folder. As I mentioned
6 earlier, the "Albums" folder was in the "My Pictures" folder on
7 the hard drive.

8 Q. And then I also could tell the date that the photograph was
9 taken; is that correct?

10 A. Right. Then it would actually give you the specific date
11 that those pictures were taken.

12 Q. So using these two charts we could learn A, the photograph
13 was taken in April of 2006 and B, the date of that photograph?

14 A. Correct.

15 Q. And in this case, what is date of that photograph?

16 A. The date is April 21st, 2006.

17 Q. Mr. Pixley, did you prepare a third summary chart?

18 A. You did.

19 Q. I am going to ask you to take a look at Government
20 Exhibit 2095 for purposes of identification.

21 What does this chart depict, Mr. Pixley?

22 A. Well, this was a chronology of the digital photographs of
23 the victims, and what it was was a -- like the earliest
24 representation or the earliest finding of a -- of each victim
25 that was found on defendant's hard drive. So these would be

1 non-pornographic images of the victims.

2 Q. And did you have to cull through all the photographs in
3 evidence in order to find these pictures?

4 A. I have gone through all of them.

5 MR. LULEJIAN: Okay. Your Honor, the Government would
6 move Exhibit 2095 into evidence. The summary exhibit.

7 MR. GUNN: I would object to this exhibit as
8 argumentative. Rule 403.

9 THE COURT: May I see it? It's argument. It's not a
10 chart.

11 BY MR. LULEJIAN:

12 Q. Mr. Pixley, we just talked about the non-pornographic
13 photographs.

14 Did you find photographs that might constitute
15 pornography or child pornography on the computer as well?

16 A. Yes, I did.

17 Q. And by computer, I should say computer media.

18 A. Yes.

19 MR. LULEJIAN: Your Honor, I would ask the Court to
20 please turn off the projector.

21 THE COURT: You can ask him yourself.

22 MR. LULEJIAN: I'm sorry.

23 Q. Mr. Pixley, did you find child pornography on the
24 defendant's hard drive?

25 A. I did.

1 Q. And did you find it on CD 1?

2 A. I did.

3 Q. And Mr. Pixley, did you prepare a summary of where the
4 pornography was located?

5 A. I did.

6 Q. Would you please take a look at 2096.

7 MR. GUNN: Your Honor, may I consult with counsel to
8 make sure I am looking at the right --

9 THE COURT: Yes.

10 MR. LULEJIAN: Your Honor was right. I got ahead of
11 myself. You may want the projector back on.

12 Q. Mr. Pixley, how did you go about preparing this chart?

13 A. Well, this is based on where I found evidence of
14 pornographic digital photographs using the embedded camera date
15 of these pictures, adding 185 days, just as I did in the other
16 chart, and then associating the exhibit number or range of
17 exhibit numbers and then -- and where were these pictures
18 located.

19 MR. LULEJIAN: Your Honor, the Government would offer
20 Government Exhibit 2096 as evidence.

21 MR. GUNN: No objection.

22 THE COURT: Admitted. Thank you.

23 (Government's Exhibit 2096 was received)

24 BY MR. LULEJIAN:

25 Q. Mr. Pixley, on the overhead is this a chart you prepared?

1 A. It is.

2 Q. If one was to look for pornographic images, would this
3 chart allow you then to find out where they were recovered and
4 when they were taken?

5 A. Yes.

6 Q. Let's talk about the first in the exhibit here,
7 Exhibit 1357.

8 What is 1357?

9 A. 1357 would be a -- a collection of the thumbnail images
10 found in the PhotoShow Express database. So the identified as
11 33 underscore Kia, where in this case, 33 indicating this is the
12 33rd album added to the PhotoShow Express software, and then Kia
13 being the name of the album.

14 Q. Okay.

15 So just so we're clear, going back to the chart you
16 prepared earlier about the structure of the hard drive, where
17 did you find 33 underscore Kia?

18 A. This would be in the top level of the folder structure that
19 we see up there underneath the cache "Albums" sub-folders. Then
20 33 underscore Kia would be a sub-folder underneath "Albums."

21 Q. And the fact that that sub-folder within "Albums" exists,
22 what does that tell you as a forensic examiner?

23 A. Well, it tells me it was part of the -- it was added based
24 on the PhotoShow Express software. Also within that folder
25 there's an info text file that tells me about those pictures,

1 and that these pictures and the -- the background of these
2 pictures and when they were introduced.

3 Q. So somebody loaded these pictures from a computer, that
4 computer, using the PhotoShow Express program?

5 A. Yes, they were added to the computer using that software.

6 Q. Now, you testified earlier when you load up pictures, in
7 addition to the small versions, the thumbnails, the actual
8 pictures come across as well?

9 A. Yes.

10 Q. Where would they be?

11 A. Well, they would -- they would originally go into as a
12 sub-folder, the "My Pictures" folder.

13 Q. When you examined the sub-folder of "My Pictures," did you
14 find a folder called "Kia"?

15 A. No.

16 Q. Did you find the pictures that were in the album, the
17 thumbnails, in the unallocated space?

18 A. There is many. I don't remember if I saw those right now
19 or not.

20 Q. But within the sub-folder "My Pictures," you didn't find
21 what would normally be associated with the uploading process?

22 A. I'm sorry, one more time?

23 Q. I am sorry. So in the -- in the directory entitled "My
24 Documents," "My Pictures," you did not find a folder containing
25 full-size images that corresponded with the thumbnail images you

1 found in the sub-directory for "Albums"?

2 A. Correct.

3 Q. What does that tell you as a forensic examiner?

4 A. Well, when you look -- as I mentioned earlier, when you
5 look in the folder 33 underscore Kia, the text file that's there
6 told me that the full-size images were actually originally
7 located in the -- in a folder underneath "My Pictures" called
8 Kia and that they're not there, which would lead me to believe
9 that somebody had deleted those pictures.

10 Q. That's based on your training and experience as a forensic
11 examiner?

12 A. Yes.

13 Q. And were you able to determine the camera time associated
14 with that photograph?

15 A. I was. Based on the info text file that was still in the
16 thumbnail folder, 33 Kia, told me that the camera date was
17 May 5th, 2005.

18 Q. When you adjusted it for 185 days, what did that turn out
19 to be?

20 A. That came out to be November 9th, 2005.

21 Q. As represented here on the chart?

22 A. Yes.

23 Q. Do you have Exhibit No. 1357 in front of you?

24 A. I do.

25 Q. Glancing through it, could you describe very briefly what

1 it contains photographs of?

2 A. It shows a young girl standing in clothes. It then shows
3 pictures over time of her disrobing herself down to where she's
4 completely nude. It then shows her laying on a bed, spreading
5 her legs and her -- exposing her vaginal area, and then posing
6 in different poses such as kneeling down on all fours, sitting,
7 squatting on a stool, and again just exposing herself completely
8 nude and then at the end, getting dressed again.

9 MR. LULEJIAN: Your Honor, with the Court's permission
10 the Government would request to publish these images to the jury
11 alone.

12 THE COURT: Mr. Pierson, would you turn off the
13 screen, please.

14 MR. LULEJIAN: A moment, please, Your Honor.

15 Q. Mr. Pixley, I am going to show you an exhibit now that's
16 previously been admitted into evidence. I am going to put the
17 non-pornographic images previously admitted as 2086 on the
18 overhead.

19 Can you see that?

20 A. I can.

21 Q. Mr. Pixley, I would ask you to take Exhibit 1357, the
22 printouts that you have in front of you --

23 A. Yes.

24 Q. -- and compare the photograph and the thumbnail number with
25 the pictures you have in front of you.

1 A. Okay. One more time.

2 Q. Let me give you the color ones. They might be easier to
3 see.

4 A. Okay.

5 Q. Mr. Pixley, on the overhead there are eight photographs
6 that bear thumbnails -- thumb identification numbers underneath
7 them.

8 Do you see that?

9 A. Yes.

10 Q. Do you see those thumbnails on the Exhibit 1357?

11 A. Do I see the -- I see the thumbnails on the exhibit.

12 Q. Okay.

13 Is there a file name associated with it?

14 A. Oh, here where it shows underneath it.

15 Q. Okay.

16 Is there -- let's start with the first one, thumbnail
17 01379.9.JPG.

18 A. Yes.

19 Q. Is there a corresponding image on Exhibit No. 135i7 with
20 that number?

21 A. Well, you handed me 1357. I see that here.

22 Q. 1357 is three pages with a number of thumbnails on it.

23 A. Correct.

24 Q. Do you see this first thumbnail, 1379.JPG on the 1357
25 exhibit?

1 A. Yes, I do.

2 Q. Okay.

3 Turning to the next thumbnail, 01448.JPG. Is this
4 picture also in 1357?

5 A. Yes, it is.

6 Q. Turning to the next picture, thumbnail 01385.JPG.

7 Is the redacted version in No. 2086 there in the
8 full-size version on 1357?

9 A. Yes.

10 Q. Turning to the next photographs, thumbnails 1417, 143 --
11 1434.JPG, are both of those redacted photographs on Exhibit No.
12 2086 also present in full-size form -- I'm sorry -- in
13 unredacted form in 1357?

14 A. Yes.

15 Q. Turning to thumbnail 1440.JPG, is the redacted version of
16 that picture in 1357?

17 A. Yes.

18 Q. And thumbnail No. 1376 through 1377, are both of those
19 thumbnails in Exhibit No. 1357?

20 A. I see 1377, but I do not see 1376.

21 Q. Okay.

22 So several of these photographs are on there?

23 A. Yes.

24 Q. Mr. Pixley, I'm going to ask you now whether you had chance
25 to examine Government Exhibits 1309 through 1326 before you came

1 to court today?

2 A. Yes.

3 Q. And where did you locate those photographs?

4 MR. GUNN: Can we get those numbers again?

5 MR. LULEJIAN: I'm sorry. 1309 through 1326.

6 Q. Where did you locate -- we will put the chart back up.

7 Where --

8 A. Can I -- I'm sorry. I was going to ask you a question.

9 Q. Please do.

10 A. As shown on the chart you can see these exhibits were
11 recovered from the unallocated space of CD No. 1.

12 Q. And is there a corresponding camera date and adjusted date
13 with those photographs?

14 A. There is.

15 Q. Okay.

16 And what is that?

17 A. This is May 7th, 2005 is the camera date and November 8th,
18 2005 is the adjusted date.

19 Q. And the photographs that you found in the unallocated space
20 of CD 1, were you able to find a corresponding album in the
21 thumbnails directory on the hard drive?

22 A. Yes. On the chart there, these were part of Album No. 32,
23 which was entitled "Nap and Kia 2."

24 Q. And what camera, make and model, took those photographs?

25 A. The Minolta Dimage S414 camera.

1 MR. LULEJIAN: With the Court's permission, I would
2 like to publish -- I would like to move Exhibit No. 1309 through
3 1326 into evidence.

4 MR. GUNN: Subject to prior objections, Your Honor.

5 THE COURT: Admitted.

6 (Government's Exhibits 1309 through 1326 were received)

7 MR. LULEJIAN: May I publish them for the jury,
8 Your Honor?

9 THE COURT: You may.

10 MR. LULEJIAN: I will slide through the pictures very
11 quickly, Your Honor.

12 Q. Mr. Pixley, did I just display the photographs in 1309
13 through 1326 on the monitor?

14 A. Yes.

15 Q. Okay?

16 And briefly would you summarize what the photographs
17 depicted?

18 A. Well, starting off that series, which were taken on --
19 again, May 7th, 2005 was the camera date with adjusted date of
20 November 8th -- it starts off with the photograph of the
21 defendant. I believe there may have been about four or five
22 pictures of the defendant. And then what I recall when you
23 actually looked at the time frame within about a minute is when
24 the girls start disrobing and continue that series there.

25 Q. Mr. Pixley, when you looked and compared those photographs,

1 1309 through 1326, with the album that you found in "32 Nap and
2 Kia," what, if anything, did you discover?

3 A. Well, looking back, one, corresponding those pictures back
4 to the thumbnail images. And --

5 Q. Were there any pictures missing?

6 A. There were. What I recall seeing is that there were -- by
7 going back and looking at the thumbnail images, I could see the
8 entire series.

9 When I looked at what was recovered from CD 1, I did
10 not see the entire series recovered from CD 1, whether they were
11 allocated space or unallocated space. But I did see pictures
12 that were part of that series that were in the user's recycle
13 bin.

14 Q. That was on the hard drive?

15 A. On the hard drive.

16 Q. And were those pictures that have been designated as
17 Exhibits 1327 through 1331?

18 A. Yes.

19 Q. And were those thumbnails or were they full-size in the
20 recycle bin?

21 MR. GUNN: I'm sorry, Your Honor, could I get those
22 numbers again?

23 MR. LULEJIAN: 1327 through 1331.

24 THE WITNESS: They were full-size pictures.

25 BY MR. LULEJIAN:

1 Q. And this indicated here at the bottom of the chart, is that
2 the hard drive?

3 A. They are.

4 Q. And you put on there, but does it say, you know, when the
5 album was first created on the computer?

6 A. The album was created on November 8th, '05, at 5:37 p.m.

7 Q. And when were those five images deleted?

8 A. Well, they were deleted six minutes later at 5:43 p.m.,
9 because when you delete pictures on a Windows computer and they
10 go to the recycle bin, not only does Windows keep track of the
11 names and where they came from, it keeps track of the time that
12 those pictures were deleted.

13 MR. LULEJIAN: Your Honor, the Government would move
14 Exhibits 1327 through 1331 into evidence.

15 MR. GUNN: No objection.

16 THE COURT: Admitted.

17 (Government's Exhibits 1327 through 1331 were received)

18 MR. LULEJIAN: With the Court's permission I would
19 like to publish them for the jury.

20 THE COURT: You may.

21 BY MR. LULEJIAN:

22 Q. Mr. Pixley, as a forensic examiner what can you tell us
23 about what happened in this series of photographs?

24 MR. GUNN: Objection, Your Honor.

25 THE COURT: What happened in them?

1 MR. LULEJIAN: I'm sorry?

2 THE COURT: What happened in them?

3 MR. LULEJIAN: I'm sorry, Your Honor. Let me restate
4 it.

5 Q. As a forensic examiner, Mr. Pixley, could you please tell
6 us what happened to the photographs from when they were loaded
7 up to the computer to the time you did the analysis?

8 MR. GUNN: Objection. Overbroad, vague ambiguous.

9 THE COURT: Do you understand that, sir?

10 THE WITNESS: I do.

11 THE COURT: You may answer.

12 THE WITNESS: From doing some date/time analysis
13 seeing when the pictures were added is that the entire series
14 from the cameras was added at 5:37.

15 Then those exhibits that you just displayed on the
16 screen, 1327 to 1331, were intentionally deleted from the "My
17 Pictures" folder. And that's why they ended up in recycle bin.

18 Then what would happen is all the pictures, the
19 remaining pictures, were then copied to CD 1. Then at some
20 point later, which there is no date/time to know when they were
21 deleted from CD 1, other than knowing that they are deleted, is
22 that somebody intentionally deleted them from CD 1, where then I
23 found them in the unallocated space of CD 1.

24 BY MR. LULEJIAN:

25 Q. Mr. Pixley, I am going to ask you now to turn to another of

1 group of pornographic photographs that were recovered from
2 Mr. Pepe's computer.

3 Did you review Exhibits 1410 through 1534 before you
4 came to court today?

5 A. I did.

6 Q. Where did you locate these photographs?

7 A. These were -- all of those were recovered from the
8 unallocated space of CD 1.

9 Q. Are these listed on your chart?

10 A. Yes.

11 Q. Where would that be?

12 A. Well, down below in the middle there underneath "Recovered
13 from CD 1 unallocated space," where it says, "Recovered 134
14 through 180," and that's for Exhibits 1410 through 1456. And
15 then "Recovered 52 through 129."

16 Now, one thing to understand, when I'm naming these as
17 recovered 134 through 180 is that when I find these pictures in
18 unallocated space, they don't have a name because the table of
19 contents is gone. So I have to give them some type of
20 identifier.

21 So what I did is I named the photos incrementally just
22 as recovered No. 1, recovered No. 2, recovered No. 3. So that's
23 what the -- 134 through 180 indicates that those are pictures
24 134 through 180 that I recovered from the unallocated space of
25 the CD.

1 Q. And were you able to match those photographs with albums
2 that appeared on the hard drive?

3 A. I did. Then I started -- as I recovered those pictures, I
4 went to the PhotoShow Express thumbnail folder structure and
5 started looking for matching and I found them. And they
6 associated with the Album No. 26 which was entitled NI of
7 102905. That would be the album name. And then the other one
8 would be Album No. 27, which the album name was just NI 2.

9 Q. Let's start with the first group of pictures, Exhibits
10 No. 1410 through 1456.

11 What photo album do these photographs correspond to?

12 A. This would be the Album No. 26 entitled 102905.

13 Q. So 26 being it's the 26th album created on the hard drive?

14 A. Yes.

15 Q. And what is the camera date associated with those
16 photographs?

17 A. Well, the imbedded date that was in each of these pictures
18 was April 26th, 2005.

19 Q. Were you able to adjust for the time difference?

20 A. I did. You mean the date difference; and that came out as
21 October 28th, 2005.

22 MR. LULEJIAN: The Government would offer and move
23 Exhibits 1410 through 1456 into evidence.

24 MR. GUNN: Just the prior objection.

25 THE COURT: Those will be admitted.

(Government's Exhibits 1410 through 1456 were received)

BY MR. LULEJIAN:

Q. Mr. Pixley, rather than show you all -- rather than show --
Your Honor, with the Court's permission we would like
to publish a sample of photographs from that series to the jury.

THE COURT: Sure.

MR. LULEJIAN: Approximately, I think, ten.

Q. Mr. Pixley, the second folder that you found, the second
album folder that you found, 27 underscore NI 2, what were the
exhibits associated with those photographs?

A. That would be 1457 through 1534.

Q. And when were they prepared -- when were they -- those
photographs taken?

A. Well, the camera date showed April 27th, 2005. When you
add 185 days, that's October 29th, 2005.

MR. LULEJIAN: And the -- the Government would move
1457 through 1534 into evidence.

MR. GUNN: Just the prior objection.

THE COURT: Those will be admitted.

(Government's Exhibits 1457 through 1534 were received)

MR. LULEJIAN: With the Court's permission I would
like to publish a small sampling of those photographs.

THE COURT: You may.

BY MR. LULEIJAN:

Q. Mr. Pixley before we turn away from CD 1, I would like you

1 to take a look at Government Exhibit 1286.

2 A. I have it in front of me.

3 Q. Mr. Pixley, what is that?

4 A. This is a sleeve from a compact disk jewel case.

5 Q. And specifically which disk does it go to?

6 A. This one goes to CD 1.

7 MR. LULEJIAN: Your Honor, the Government would move
8 1286 into evidence.

9 THE COURT: Any objection?

10 MR. GUNN: No, Your Honor.

11 THE COURT: That will come in. Thank you.

12 (Government's Exhibit 1286 was received)

13 BY MR. LULEJIAN:

14 Q. I see some handwritten notes on the jewel case?

15 A. Yes.

16 Q. And I see a number of things that are crossed out,
17 scratched out.

18 Do you see that?

19 A. I do.

20 Q. Having reviewed CD 1, do these names mean anything of
21 import to you?

22 A. Well, they do. If you look at the bottom where it says,
23 "Four girls, home, 10/28/05" and then "SKV" and "New Girl,"
24 those are actually folders that were located on CD 1 that had a
25 table of contents entry for each of these folders.

1 The ones that are crossed off, the names match to what
2 I found and what we just went through to the actual albums. So
3 we see where I found photographs on some of these exhibits that
4 matched an album called NI 102905. You can see that on the
5 jewel case cover where it's crossed off. You also see where
6 it's crossed off NI 2. That is an album that I matched
7 recovered photographs back to.

8 Q. In fact, NI 2 was the one we just displayed; isn't that
9 right?

10 A. Yes.

11 Q. And Nap and Kia 2 was displayed earlier today as well,
12 wasn't it?

13 A. Yes. That was also part of the pornographic images that
14 were shown.

15 Q. I am going to show you what has been marked -- I am going
16 to ask -- I would like to show you what has been marked as
17 Government Exhibit No. 2036. I'm not sure you have that in
18 front of you, Mr. Pixley. I'm showing it to counsel.

19 Your Honor, the Government would move -- let me show
20 it -- to the witness. May I approach?

21 THE COURT: Yes.

22 Any objection?

23 MR. GUNN: I have no objection.

24 THE COURT: Thank you. That will come in.

25 (Government's Exhibit 2036 was received)

1 BY MR. LULEJIAN:

2 Q. Mr. Pixley, take a look at government 2036 which is up on
3 the ELMO.

4 Do you recognize this?

5 A. I do. I recognize those names.

6 Q. Okay.

7 And where are those names from?

8 A. These names are from folders that were on CD No. 15.

9 Q. And did you see any of these folders when you examined
10 the -- did your forensic work?

11 A. On CD No. 15 I did.

12 Q. And I am going to put next to this your summary chart,
13 Mr. Pixley, which I think was Government Exhibit No. 29-3.

14 And do we see, for example, the name "Mom" and "Mom's"
15 appearing both on the computer media you found as well as on the
16 CD cover?

17 A. Yes.

18 Q. Do we see "Girls 1 2" -- I'm sorry. Strike that.

19 Do we see "Christmas 1" appearing on that?

20 A. Yes.

21 Q. Do we see "2006-month" appearing on both documents?

22 A. Yes.

23 Q. Do you see "Valentine's Girls" appearing on those
24 documents?

25 A. Yes.

1 Q. Mr. Pixley, the chart you made that summarizes the
2 non-pornographic exhibits, is that all of the directories you
3 examined?

4 A. No, that's not all of them.

5 Q. So there may be other directories that correspond to CD 15
6 that are not on this list?

7 A. Absolutely.

8 Q. Mr. Pixley, I'd like to switch subjects now.

9 During the course of your examination of the
10 defendant's computer media, did you examine the thumb drive?

11 A. I did.

12 Q. And where did that thumb drive come from?

13 A. Well, my -- --

14 MR. GUNN: Objection. Lack of personal knowledge.

15 THE COURT: Sustained.

16 BY MR. LULEJIAN:

17 Q. Mr. Pixley, do you --

18 THE COURT: Does the stipulation not go to that? I'm
19 sorry.

20 MR. LULEJIAN: Actually the stipulation did go to
21 that.

22 MR. GUNN: In part, at least with respect to the
23 images, Your Honor. I just don't think it's --

24 MR. LULEJIAN: We will move to the stipulation,
25 Your Honor.

1 THE COURT: Thank you.

2 BY MR. LULEJIAN:

3 Q. Mr. Pixley, did you -- when you examined that thumb drive,
4 did you understand that it was seized as part of this
5 investigation?

6 A. Yes.

7 Q. And did you understand it was seized during the search
8 warrant?

9 A. Yes.

10 Q. Did you find anything unusual on that thumb drive when you
11 examined it?

12 A. I did.

13 Q. What did you find?

14 A. What I found, and based on date and time analysis, is that
15 normally when you seize evidence like electronic media such as a
16 thumb drive, you want to write-protect that so you don't make
17 any changes. But what I was finding on there was activity on
18 that drive, meaning folders and some files that were copied to
19 that thumb drive after it was seized. But -- and before it was
20 imaged.

21 Q. Let's be very specific. Did you find any digital photos?

22 A. I did.

23 Q. I should say digital photos that were copied after the date
24 that you understood that the thumb drive had been seized?

25 A. I did. For example, I saw a copy of the defendant sitting

1 in handcuffs on the thumb drive.

2 Q. Did you see any other photos that were added that may have
3 appeared after the day of the arrest?

4 A. I may have seen one.

5 Q. Did you see -- you said you saw some folders.

6 Do you remember the names of any of the folders?

7 A. Yeah, I believe it was called "Pepe Case 008."

8 Q. What did this tell you when you saw it?

9 A. That somebody had accessed this thumb drive without using a
10 write-block device to protect writes from occurring on that
11 drive, on the thumb drive, that created the folder and then
12 somebody deleted that folder.

13 Q. Could you tell whether or not any other files on that thumb
14 drive had been -- had been added to or deleted?

15 A. I saw some files being added, like one that I remember was
16 a JPEG, I don't remember the exact name, but it said "rotation
17 of" and it was a rotation of a picture.

18 Q. But for the most part -- let me rephrase that.

19 With the exception of those few things you pointed
20 out, was there any tampering, for lack of a better word, of the
21 data that was on that thumb drive?

22 A. Right. Then I looked at did -- was there alterations of
23 some of the photographs that I was looking at, and I did not
24 find alterations of the photographs.

25 Q. What did you look for to determine whether there was

1 alterations?

2 A. Well, from the date/time analysis, what we look for on this
3 specific thumb drive, the thumb drive tracks when files are
4 added, when files are last written to, being updated, and when
5 files are last accessed. And so I looked at these three date
6 and time stamps to get an idea of the scope of what was touched
7 after this thumb drive was seized.

8 Q. And what did you ultimately conclude?

9 A. Well, that I didn't find -- of the pictures that I was
10 looking at, I did not find any alterations of those pictures.
11 On some of the pictures that I was looking at had been -- they
12 were deleted, they were sitting in unallocated space.

13 Q. So what did that tell you?

14 A. That they were deleted prior to the seizure and that they
15 were untampered with. They were intact the way they were prior
16 to the seizure.

17 Q. Okay.

18 Were any of the photographs that I have shown you
19 today on that thumb drive?

20 MR. GUNN: I didn't hear that question.

21 THE COURT: Would you repeat that?

22 MR. LULEJIAN: Certainly.

23 Q. Were any of the photographs that I have shown you today on
24 that thumb drive?

25 THE COURT: You mean from that thumb drive or also on

1 that thumb drive?

2 MR. LULEJIAN: Also on that thumb drive. Actually,
3 you are right. From that thumb drive. Meaning it originated
4 from the thumb drive.

5 THE WITNESS: One more time, please.

6 BY MR. LULEJIAN:

7 Q. Let me try to rephrase it.

8 I have shown you a number of photographs today that we
9 have walked through. Those photographs, I think you testified
10 to, came from the hard drive?

11 A. Yes.

12 Q. Came from CD 1?

13 A. Yes.

14 Q. And CD 15.

15 Have you -- have we talked about -- have we displayed
16 any photographs from the thumb drive today?

17 A. No.

18 Q. And were those photographs of the -- were those photographs
19 from the hard drive?

20 A. Yes.

21 Q. Were they from CD 1?

22 A. No. I'm thinking where they were on the hard drive.

23 Q. Did you find photographs from CD 1 that was shown today in
24 court?

25 A. I'm just -- I'm drawing a blank.

1 Q. Let me rephrase the question.

2 The photographs that you have been shown today, they
3 came from CD 1 --

4 A. Yes.

5 Q. -- and 15 of the hard drive; is that correct?

6 A. Correct.

7 Q. None came from the thumb drive?

8 A. Correct.

9 MR. LULEJIAN: All right. We have a couple of minutes
10 left, Your Honor, and I think I can finish up with Mr. Pixley
11 pretty close to time.

12 THE COURT: Okay.

13 BY MR. LULEJIAN:

14 Q. Mr. Pixley, in addition to looking for photographs, did you
15 find any mail messages on the defendant's computer?

16 A. I did.

17 Q. Okay.

18 And were you able to determine what kind of mail
19 program the defendant used?

20 A. It was -- yes, I did.

21 Q. Okay.

22 And what kind was it?

23 A. It was a web-based mail program called Hotmail.

24 Q. Is that the one I can access just by going on the Internet?

25 A. Yes.

1 Q. Okay.

2 And were you able to recover mail messages that were
3 sent or received from that -- sent or received through the
4 Hotmail?

5 A. Yes.

6 Q. How did you go about doing that?

7 A. What you would look for is since it's web-based email, you
8 would first look in the user's Internet cache, which is where I
9 looked, to see if there were any Hotmail messages still cached
10 on the hard drive, meaning that these are allocated files. And
11 I found email messages there.

12 Q. And were you able to go back and reconstruct them in their
13 native format? In other words, how they appeared to the user
14 when he or she accessed the Hotmail account?

15 A. Yes.

16 Q. Okay.

17 I would like to show you what has been marked as
18 Government's Exhibit No. 2097 for purposes of identification.

19 Do you recognize that document?

20 A. I do.

21 Q. What is it?

22 A. This is a Hotmail message that's being created using the
23 defendant's Hotmail account and being sent to a person with a
24 first name of Mack.

25 MR. LULEJIAN: Your Honor, the Government would move

1 Exhibit 2097 into evidence.

2 MR. GUNN: Your Honor, that's fine.

3 THE COURT: That comes in, thank you.

4 (Government's Exhibit 2097 was received)

5 MR. GUNN: I do object but I think it's a previously
6 noted objection. I object under 403 and relevance.

7 BY MR. LULEJIAN:

8 Q. Who is this message going to, Mr. Pixley?

9 A. Well, this is going to -- well, based on the text, it's
10 going to someone named Mack. It's being addressed to a Yahoo
11 mail account. It's Khunkcm@yahoo.com.

12 Q. What is the subject of that message?

13 A. "Girls."

14 Q. Is there text that the user wrote in there as well?

15 A. Yes.

16 Q. Can you read that out loud?

17 A. It says, "Dear Mack: Thank you for the email with
18 pictures. It helps me to make up my mind and continue to stay
19 here longer. The sweet things I have with me have the most
20 perfect little bodies and attitudes. Take care of yourself. I
21 am thinking about you. Best wishes, Michael."

22 Q. Were you able to determine when that message was sent?

23 A. Within a couple of seconds after I located this, I found a
24 message indicating that this message had been sent.

25 Q. And what was the date?

1 A. This would have been, I believe, on March 30th of '06.

2 Q. In addition to this message, did you recover any other
3 messages?

4 A. I did.

5 Q. I am going to ask you to take a look at Government Exhibit
6 No. 2009.

7 Do you have that in front of you?

8 A. I do.

9 Q. What is 2009?

10 A. This is a summary chart of the Hotmail messages I located.

11 Q. I'm sorry. You must be looking at the wrong exhibit.

12 A. Oh.

13 Q. Do you have 2009 in front of you?

14 A. Yes. 2009 we just went through, I believe.

15 Q. So this is a copy of the text of that message?

16 A. Yes. Text only.

17 Q. Would you please take a look at 2010 and 2011.

18 A. Yes.

19 Q. What are those?

20 A. These are two other messages where it just contains the
21 text only and not the graphics that we saw in the exhibit you
22 had displayed earlier.

23 Q. The email address on those messages -- the email address on
24 2009, 2010 and 2097, the recipient, is it the same?

25 A. Yes, it is.

1 Q. And that's Khunkcm -- that would be Khunkcm@yahoo.com?

2 A. Yes.

3 Q. And in 2010, what does the subject line read?

4 MR. GUNN: Objection, Your Honor, no foundation. It's
5 not admitted yet, I don't believe.

6 THE COURT: Sustained.

7 BY MR. LULEJIAN:

8 Q. Were you able to find out who the person that message was
9 addressed to based on these messages?

10 A. Yes.

11 Q. Did you find out who the person who typed the messages
12 signed his or her named as?

13 A. Yes.

14 Q. Were you able to associate dates and times of transmission
15 or creation with those messages?

16 A. Yes.

17 MR. LULEJIAN: Your Honor, the Government would move
18 Exhibits 2009, 10 and 11 into evidence.

19 MR. GUNN: Still no foundation as to 10 and 11.

20 THE COURT: Let me see those, please.

21 Did he say where he found these?

22 MR. LULEJIAN: That is what I realized I forgot.

23 Q. Mr. Pixley, where did you find these messages?

24 A. These were in the "Internet" cache folder.

25 Q. Is that the same place where you found Exhibit 2097?

1 A. Yes.

2 Q. That was where the Hotmail messages were from?

3 A. Yes.

4 MR. LULEJIAN: Your Honor, the Government would move
5 Exhibits 2009, 2010, 2011 and if I haven't, 2097 into evidence.

6 MR. GUNN: I previously noted objections to these.

7 THE COURT: They are admitted. Thank you.

8 (Government's Exhibits 2009 through 2011 were received)

9 BY MR. LULEJIAN:

10 Q. Very briefly, the title in the "Subject" line of 2010, what
11 does it read?

12 A. The subject line is: "Re: Thanks for the advice."

13 Q. And 2011, what does the title read?

14 A. "Hello."

15 Q. Mr. Pixley, were you able to put dates and times with the
16 transmission of those photographs?

17 A. I did.

18 Q. Or the creation of those photographs?

19 THE COURT: Not photographs.

20 MR. LULEJIAN: I'm sorry. Thank you, Your Honor.
21 Long week.

22 THE COURT: You are getting no sympathy from me,
23 Mr. Lulejian.

24 BY MR. LULEJIAN:

25 Q. Mr. Pixley, were you able to associate a date and time of

1 creation with these Hotmail messages?

2 A. Yes.

3 Q. And did you memorialize those in a document?

4 A. I did.

5 Q. Would you please take a look at Government Exhibit 2099.

6 A. I have it in front of me.

7 Q. Okay.

8 And is that the memorialization of that information?

9 A. Yes.

10 Q. And does it tell you also who the message was addressed to?

11 A. Yes.

12 Q. And the subject matter?

13 A. Yes.

14 MR. LULEJIAN: The Government would move 2099 into
15 evidence, Your Honor.

16 MR. GUNN: I object. I don't think this is
17 particularly complex to file a written summary.

18 THE COURT: Well, I will allow you to show it. I
19 don't know why this needs to be in evidence if this information
20 is in the documents.

21 BY MR. LULEJIAN:

22 Q. Just to lay a foundation then, the mail message 10 --
23 2010 -- 2010, with the "Subject" line, "Thanks for the advice,"
24 when was that message sent?

25 A. That was sent on May 14th, 2006.

1 Q. And the last message, 2011, when was that message sent?

2 A. On June 3rd, 2006.

3 MR. LULEJIAN: One moment, please, Your Honor.

4 Your Honor, the Government has no further questions.

5 THE COURT: Good timing.

6 Ladies and gentlemen, don't talk about the case or
7 form or express any opinions about the case until it's finally
8 submitted to you. You're ordered to return Tuesday at 8:00 a.m.
9 and you're ordered to have a great three days.

10 (Jury Out)

11 THE COURT: Mr. Pixley, you are ordered to return
12 Tuesday at 7:45. You are excused.

13 Ms. Donahue, where are my jury instructions?

14 MS. DONAHUE: We have several disagreements that I am
15 trying to work out.

16 THE COURT: Okay.

17 MS. DONAHUE: I will -- we will work some of them out
18 and I will have the unworked out ones to you on Monday.

19 THE COURT: Excellent. Thank you. Anything else we
20 need to discuss before Tuesday?

21 MS. DONAHUE: No, Your Honor.

22 THE COURT: From the defense perspective?

23 MR. BROWN: No, Your Honor.

24 MR. LULEJIAN: Your Honor, would you like me to retain
25 the child pornography before you go off to chambers?

Certificate of Service

I hereby certify that on May 28, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

By: /s/ James H. Locklin
JAMES H. LOCKLIN
Deputy Federal Public Defender

No. 14-50095

**In the United States Court of Appeals
for the Ninth Circuit**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MICHAEL JOSEPH PEPE,

Defendant-Appellant.

On Appeal from the United States District Court
for the Central District of California

The Honorable Dale S. Fischer, Presiding

No. CR-07-00168-DSF

Appellant's Excerpts of Record
[Volume 7 of 12]

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[†] Although this document and the two orders that follow were not filed until after the judgment and notice of appeal were filed, they are placed here in the excerpts because they relate to the trial proceedings.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE DALE S. FISCHER, JUDGE PRESIDING

United States of America,)
Plaintiff,)
vs.) Case No.
) CR 07-168 (A) -DSF
Michael Joseph Pepe,)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS

Day 7

Los Angeles, California

Tuesday, May 20, 2008

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25

Los Angeles, California, Tuesday, May 20, 2008

7:46 a.m.

-oOo-

(Jury Out)

THE COURT: Good morning.

MS. DONAHUE: Good morning.

MR. LULEJIAN: Good morning, Your Honor.

MR. GUNN: Good morning.

THE COURT: Hopefully Mr. Pepe will be here momentarily, but I think we can discuss one or two matters without him.

It looks like there is going to be testimony by way of deposition. How did counsel want to handle that with the court reporter?

MS. DONAHUE: We were going -- we have the deposition loaded onto the computer, and we are going to play it. Since there is already a transcript prepared, redacted pursuant to this Court's order, it would seem duplicative to have the court reporter sit here and take down what is on it, especially since it's a videotape, and we can just enter the videotape into evidence. We don't see a reason to require her to transcribe what is on the tape.

MR. GUNN: I think that is right. There is just the caveat that I am not sure -- the transcript we have now was just prepared sort of for us to make redactions. I don't know if

1 it's quite as reliable and accurate as a transcript by your
2 reporter would be. On the other hand, I guess if we have the
3 DVD or video, it can always be checked. I guess it depends on
4 how --

5 MS. DONAHUE: We can put the video into evidence and
6 it will speak for itself as this is the exhibit that was played
7 in court.

8 MR. GUNN: I was simply going to say it depends maybe
9 on how hard or how much work or inconvenient it is for the
10 reporter to take it down. If that's a big difficulty or
11 significant difficulty I don't want to --

12 THE COURT: I don't want to speak for my court
13 reporter who is absolutely the best. I probably mentioned that
14 she started reporting for me when I was a brand new lawyer 28
15 years ago when she worked for a deposition firm. So I've known
16 Pam longer than we both want to remember. But it is really
17 difficult. I suspect this one will be extraordinarily
18 difficult so --

19 MR. GUNN: I don't have a problem with that, Your
20 Honor. I mean, it can always be checked later if there's an
21 issue. I mean, I know I noticed a couple things but it's
22 probably okay.

23 THE COURT: Okay. So we will have the excerpted
24 transcripts or videos attached as exhibits or marked as
25 exhibits.

1 MS. DONAHUE: Yes. We'll mark a disk and then we'll
2 just play it off the computer and we will set it up at the
3 break.

4 THE COURT: If for some reason the jury needs to
5 re-hear it, we'll simply play -- because we would have to play
6 the whole thing anyway.

7 MR. GUNN: I did have one related question regarding
8 the deposition or depositions. At times there are exhibits
9 shown to the witness. I was wondering if it would make sense
10 and if we could at least, where counsel wanted to put, pause the
11 deposition and put the exhibit up on the Elmo so the jury knows
12 what exhibit the witness is looking at.

13 THE COURT: I think we probably should.

14 MS. DONAHUE: We have the deposition exhibits in the
15 binders.

16 THE COURT: Okay.

17 MR. GUNN: In my case, Your Honor, what I used was
18 exhibits shown on a computer screen, but I have hard copies of
19 those that are marked under a different exhibit number, the
20 S.S.xxx birthday set. So with the Court's permission, I would
21 just use those instead of the computer.

22 THE COURT: That's fine.

23 MR. GUNN: Although I actually have my computer hooked
24 up so I might be able to do it either way.

25 I have one other issue to bring up with the Court

1 when you are ready.

2 THE COURT: All right. Mr. Gunn.

3 MR. GUNN: Yes, Your Honor. I just wanted to flag a
4 potential scheduling problem with the Court that involves one of
5 our experts and the depositions, two of which are being prepared
6 in the redacted form.

7 I don't have a good feel for how long our Defense
8 witnesses are going to take. There is a fair number of them,
9 but they may all be short and quick enough that we get them done
10 in a day. I don't have a good feel for it.

11 Dr. Maloney, our expert, is not available on Thursday
12 morning because he's a consultant for the county jail. He is
13 available Friday morning. There is -- and we're still -- the
14 Government is working on getting the redactions done to the Ly
15 Kim Eng depo. It is hoped that will be available by Thursday
16 morning. I think it's important for the parties to then review
17 it to make sure everybody is on the same page about the
18 redactions.

19 So hopefully -- I guess where I'm going is there is a
20 slight possibility that we may not be able to fill the day on
21 Thursday if the depositions aren't ready. And Dr. Maloney is
22 our last witness. And I just wanted to flag that for the Court
23 and I hope the Court would work with us on that if that's the
24 case.

25 THE COURT: Well, I'll work with you, but I don't know

1 what fill the day means. If fill the day means you are done at
2 9:00 and you have nothing to do, I will not be a happy camper.
3 If fill the day means you are done at 12:00 or 12:30, I don't
4 have a problem with that.

5 MR. GUNN: Well, the deposition of Ly Kim Eng when --
6 if and when it's ready -- when it's ready, will be about two or
7 three hours. The deposition of Koeung Lang is probably about
8 the same. I think it's probably going to be a long shot for the
9 Koeung Lang deposition to be ready by Thursday.

10 THE COURT: Well, who is doing it?

11 MR. GUNN: The Government.

12 THE COURT: Tell them to work overtime. I don't care.

13 MS. DONAHUE: One thing I proposed to Mr. Gunn is
14 given that these are two Defense depositions, would it be
15 possible for someone from the federal public defender's office
16 to do the technical work on one. And he pointed out to me under
17 the Administrative Courts Act, it is the Government's -- the
18 Department of Justice's responsibility to do this for the
19 Defense depos, which we are.

20 But in the interests of time, if the public defender's
21 have someone with the editing program, there's no reason they
22 couldn't start and maybe we can try and work something like that
23 out.

24 MR. GUNN: I am not sure we do, Your Honor.
25 Apparently the process of downloading them onto whatever system

1 our tech person uses is a very time-consuming process and we
2 have not done that because we had assumed the Government was
3 handling it under the AO guidelines. I will certainly look
4 further into that but I --

5 THE COURT: All right.

6 MS. DONAHUE: We're moving on it, Your Honor, and
7 working overtime on it.

8 THE COURT: Okay.

9 MR. GUNN: Perhaps, we can obviously have better
10 information and better feel for this at the last recess or the
11 end of the day on Wednesday obviously. I just wanted to run it
12 by the Court.

13 THE COURT: Okay.

14 MR. GUNN: We may be calling our dermatologist as a
15 witness and we will do that Thursday but I don't know for sure,
16 it will depend on the Government dermatologist, the testimony.

17 THE COURT: Okay.

18 MR. LULEJIAN: A couple things from the Government,
19 Your Honor. Last week I finished rapidly at the end of the day,
20 I realized that I missed a topic and a couple of small points.
21 With the Court's permission, I would ask respectfully to reopen
22 direct. I think I can get through it probably in about 20 or 30
23 minutes.

24 THE COURT: With Mr. Pixley?

25 MR. LULEJIAN: With Mr. Pixley.

1 The second thing, Your Honor, Special Agent Wang has
2 exhibits for the day that he is handing up -- he's about to hand
3 up to you. There is one exhibit on top that has do with chart
4 of the emails. We had presented a chart -- and maybe it would
5 be better if Your Honor takes a look at it so you know exactly
6 what I'm talking about.

7 On top of the stack, Your Honor, is Exhibit 2099 which
8 was a summary chart of three emails. The reason the Government
9 wanted to introduce that, Your Honor, as you can see from the
10 three underlying emails that are attached to it, Exhibits 2009,
11 ten and eleven, that the date and time stamps for those emails
12 did not come across when they were recovered. Mr. Pixley had to
13 do some extra investigation in order to determine that.

14 It's our position that those dates are important and
15 will be very informative to the jury. And while we can
16 certainly present that to Mr. Pixley orally, we think it would
17 be helpful for them to have it on an exhibit. So I would like
18 to lay the foundation on that exhibit, Your Honor, and move it
19 in again. I know the Court is loathe to revisit rulings but in
20 this case I would ask it to.

21 THE COURT: Mr. Gunn.

22 MR. GUNN: Your Honor, I just don't think when we are
23 talking about basically three pieces of testimony that it needs
24 to be or should be summarized in writing. I mean, there's lots
25 of important testimony we would like to have a written

1 memorialization of, too.

2 THE COURT: Well, there is no legal basis for
3 introducing a chart just because I guess you think the jury is
4 not going to pay attention or write it down or whatever.

5 MR. LULEJIAN: Yes, Your Honor.

6 THE COURT: That is not grounds to introduce a chart.

7 All right. I have the joint jury instructions. Those
8 aren't actually the ones I need. I need the ones you're
9 disputing so I can figure out what I am going to do with them.

10 MS. DONAHUE: They're in one pleading. The Defense
11 has them. If -- provided the Defense approves my having
12 collated everything properly, we have them this morning. I also
13 have the proposed verdict form with the Defense.

14 THE COURT: Okay. So those need to be emailed to the
15 chambers email box in addition to being docketed because I can't
16 manipulate them from the docket.

17 MS. DONAHUE: Okay.

18 THE COURT: Anything else before the jury comes in?

19 MR. LULEJIAN: Nothing from the Government,
20 Your Honor.

21 THE COURT: All right. It looks like we can start in
22 about five minutes, then.

23 (Recess taken)

24 (Jury In)

25 THE COURT: Good morning. I hope you had a great

1 three days. Our witness is back on the stand.

2 Mr. Pixley, you are still under oath.

3 Mr. Lulejian.

4 MR. LULEJIAN: Thank you, Your Honor.

5 DIRECT EXAMINATION RESUMED

6 BY MR. LULEJIAN:

7 Q. Mr. Pixley, last week during your testimony you were shown
8 a series of overheads and a PowerPoint to talk to the jury about
9 how the optical disk worked, how the camera worked and a number
10 of other things; is that correct?

11 A. Yes.

12 Q. And who prepared that PowerPoint?

13 A. I did.

14 Q. And you used it to aid the jury?

15 A. Yes.

16 MR. LULEJIAN: Your Honor, at this time the Government
17 would move Mr. Pixley's PowerPoint, which is Exhibit 2100, into
18 evidence.

19 MR. GUNN: If I could have one moment, Your Honor, to
20 make sure I am clear on which exhibit -- may I consult with
21 counsel, Your Honor, so I am clear on which exhibit we are
22 talking about?

23 THE COURT: You may.

24 MR. GUNN: If I could have just one moment,
25 Your Honor.

1 THE COURT: Okay.

2 MR. GUNN: No objection.

3 THE COURT: All right, that will come in. Thank you.

4 MR. GUNN: 2000?

5 THE COURT: 2100.

6 (Government's Exhibit 2100 was received)

7 BY MR. LULEJIAN:

8 Q. Mr. Pixley, you had mentioned last week that as part of
9 your analysis, you took photographs using a Minolta DImage
10 camera, Model S-414.

11 Where did you get that camera?

12 A. I purchased it on eBay.

13 Q. And why did you purchase it?

14 A. Well, I noticed that the defendant's computer and the
15 photographs I was analyzing were associated with that make and
16 model of camera and what I wanted to do was test the
17 functionality of that camera and basically use the purchased
18 camera as a controlled environment to test what I was seeing, as
19 far as dates and times and how the camera functioned and how the
20 software functioned.

21 Q. And were you able to do so?

22 A. I was.

23 Q. And the -- did you take photographs that we showed in court
24 last week?

25 A. Yes.

1 Q. And was this camera used as part of your analysis of this
2 case?

3 A. Yes, it was.

4 MR. LULEJIAN: Your Honor, the Government would move
5 Government Exhibit 2098 into evidence.

6 MR. GUNN: No objection.

7 THE COURT: That will come in. Thank you.

8 (Government's Exhibit 2098 was received)

9 BY MR. LULEJIAN:

10 Q. Another thing we talked about last week, Mr. Pixley, was a
11 thumb drive that was seized from the defendant's residence.

12 Did you analyze this advice -- this device?

13 A. I analyzed a forensic image of that device.

14 Q. What is a forensic image?

15 A. A forensic image is a complete sector copy of that piece of
16 media. So everything that's on that thumb drive is what I
17 analyzed.

18 Q. And what is a thumb drive?

19 A. A thumb drive is a small portable storage device that you
20 can connect to a computer and store anything from digital
21 photographs and files, any type of electronic media or computer
22 files.

23 Q. Is it stationary or is it portable?

24 A. It is portable. You put it in your pocket.

25 Q. Okay.

1 Is there a limitation on what kind of computer can
2 accept a thumb drive, a personal computer?

3 A. No. A thumb drive would work on a Windows-based computer
4 or a Macintosh-based computer.

5 Q. If one purchases a thumb drive and plugs it into his or her
6 computer, are you limited to only use it on the owner's computer
7 or can you take it elsewhere?

8 A. Oh, you can use it on any computer that has a USB port.

9 Q. And a USB port is what?

10 A. It is a -- it's a plug on the side of the computer that you
11 would connect the portable storage device to.

12 Q. Mr. Pixley, have you had an opportunity to examine the
13 forensic image of the thumb drive seized from the defendant's
14 residence?

15 A. Yes.

16 Q. And I am going to ask you to please take a look at
17 Government Exhibit No. 2102.

18 A. Okay.

19 Q. Do you recognize this exhibit?

20 A. I do.

21 Q. What is it?

22 A. This is a representation of the folder structure that is on
23 that thumb drive.

24 Q. When you say "folder structure," what do you mean?

25 A. Well, that thumb drive has multiple folders on it where

1 files can be stored within those folders, like a filing cabinet.

2 And this lists the folders that are on that thumb drive.

3 It also lists some additional items here that I found
4 that had been copied to that thumb drive.

5 Q. We'll talk about that in a second.

6 Who prepared this exhibit?

7 A. I did.

8 Q. And would this exhibit be helpful in explaining the thumb
9 drive and what happened to it to the jury?

10 A. Yes.

11 Mr. LULEJIAN: Your Honor, the Government would move
12 Exhibit No. 2102 into evidence.

13 MR. GUNN: No objection, Your Honor.

14 THE COURT: All right. That will come in, thank you.

15 (Government's Exhibit 2102 was received)

16 MR. LULEJIAN: May I publish, Your Honor?

17 THE COURT: Yes.

18 BY MR. LULEJIAN:

19 Q. Is this a chart you prepared, Mr. Pixley?

20 A. Yes, it is.

21 Q. Let's start with the file structure of the thumb drive.

22 Could you please explain it.

23 A. Well, starting at the very top is the name of the thumb
24 drive image. In this case it was named Pepe TD 256 MB, which
25 stands for thumb drive, 256 megabytes, which is how much --

1 well, the storage capacity that thumb drive was.

2 Right below that is -- represented is "C" which is the
3 root folder. That is the beginning folder of that thumb drive.

4 Below that you see a number of folders and different
5 symbols next to those folders. Those symbols represent the
6 state of the folders. For example, the first one where it says
7 Pepe Case 008, that folder has been deleted. Not only has it
8 been deleted, it's overwritten, which means that this is where
9 the table of contents, as we talked about last week, this thumb
10 drive has a table of contents. That entry is still in the table
11 of contents but it doesn't point to anything any more, other
12 than it just being an entry in the table of contents.

13 Q. What are the folders underneath the Pepe Case 008?

14 A. Well, then you see one that shows underscore P-I-D-D-R.
15 Same thing, that is a deleted overwritten file or overwritten
16 folder.

17 Below that is a folder named Boy. Now, that folder is
18 a deleted folder, meaning that there are files still in that.
19 Using forensic software, I can see those files that are still
20 there.

21 So this is where -- this one -- same thing with Girls
22 3 and Girls 4 -- this is where using forensic software, when
23 somebody deletes a folder, as a user you would not see that
24 folder anymore. But the entry still exists and the contents
25 within those folders still exist. So I can still see the files

1 that are in there.

2 Q. Without describing -- let me ask a leading question.

3 Did you find digital images in those folders, Boy,
4 Girls 2, Girls 3, Girls 4?

5 A. Well, the Girls 2 that you just referred to is a deleted
6 overwritten folder so I did not see anything in there.

7 The Boy, Girls 3 and Girls 4, those folders contained
8 digital photographs.

9 Q. What about the next folder, Hen with the 2 and the funny
10 character behind it?

11 A. Right. That is also a deleted overwritten folder.

12 Q. And then Hen 1 with a box next to it?

13 A. That is a also -- that is a deleted folder.

14 Q. What about Home 11 -- I'm sorry. Home 111605?

15 A. That is a deleted folder.

16 Q. Home Girls 0705?

17 A. Deleted folder as well.

18 Q. And Nary 2?

19 A. That's a deleted overwritten folder.

20 Q. So let me see if I understand this. There are a number of
21 folders in this structure that have been deleted. The deleted
22 overwritten ones you cannot access the contents. The deleted
23 ones you can access the contents?

24 A. That is correct.

25 Q. And that's using forensic tools?

1 A. Yes.

2 Q. Would that be visible to me, just a user who plugged it
3 into my computer?

4 A. No. If you plugged that thumb drive into your computer,
5 the first folder you would see is down below, called Up North.
6 And you would see those -- the sub folders underneath Up North
7 with the exception of Pepe Case 008.

8 Q. And we know that because -- what's happened to that file?

9 A. That's a deleted overwritten folder.

10 Q. So in Up North I would see one, two, three -- four folders,
11 not counting Pepe 008?

12 A. Yes.

13 Q. In addition to the Girls 3 and Girls 4 folders, did you
14 find digital images in any of the other folders?

15 A. Yes. I found digital images in -- or digital photographs
16 in the majority of these folders.

17 Q. Let's talk about the Up North folders.

18 Actually before I go there, were you able to determine
19 what type of camera took these pictures?

20 A. There was two cameras that were used to take photographs
21 that were stored on this thumb drive. One was the Minolta
22 DImage S 414 camera that we talked about last week. And then
23 there was another one that was a Canon PowerShot SD100 camera
24 used to take those pictures.

25 Q. And where were the Canon PowerShot SD100 photographs found?

1 A. Those were in the Friends 111111 folder.

2 Q. Were there any other photographs, digital photographs, that
3 you discovered on the thumb drive other than the Friends 111111
4 folder that were taken with a camera, a Canon PowerShot SD100?

5 A. No. But there is one other photograph that is different
6 than the others as well.

7 Q. And what is that, Mr. Pixley?

8 A. That's the one that I have displayed in the top right
9 corner. The name of that image is IMGP 1234.JPEG.

10 Q. What is that, Mr. Pixley?

11 A. This is a digital photograph of the defendant sitting in
12 custody.

13 Q. Why don't we jump ahead and talk about that a little bit
14 and then we will come back to the folders.

15 At the very top you have a box of three things. Pepe
16 Case 008, this image file that you discussed and something
17 called DOC.EXE.

18 Why have those been segregated?

19 A. Well, one of the things I noticed when I examined the image
20 of the thumb drive is activity that occurred on this thumb drive
21 after it was -- what I understand, after it was seized from the
22 defendant's residence.

23 Q. And that would have been on June 17th of 2006?

24 A. Yes.

25 Q. Okay.

1 And were you able to tell which files or folders were
2 added to the thumb drive after that date?

3 A. Yes, I was.

4 Q. And which ones were those?

5 A. Well, that's what I have notated in the box in the top
6 right corner, Pepe Case 008, the digital photograph, and a file
7 called DOC.EXE.

8 Q. What is that DOC.EXE file?

9 A. Well, that's a deleted file that the only thing that's left
10 of that file is a fragment of the file that it is an
11 executable -- meaning it is some type of software program -- but
12 I don't know what the functionality of that program is.

13 Q. Were there any files on this thumb drive accessed, as
14 opposed to added, after June 17th of 2006?

15 A. Yes, quite a few files were accessed on the thumb drive.
16 The folders where -- down below on the chart from Up North
17 that's checked in blue, Friends 111111, Girls 2, Nary 2 and
18 Spider, those folders contain files that were accessed after it
19 was seized.

20 Q. And were there files on the thumb drive that were not
21 accessed after June 17th, 2006?

22 A. Yes.

23 Q. And which ones were those?

24 A. Well, the files that were not accessed would be digital
25 photographs that are in the deleted folders above such as Boy,

1 Girls 3, Girls 4, and then the two other folders, Home 111605
2 and Home Girls 0705.

3 Q. How do you know this?

4 A. Well, one of the things that the thumb drive keeps track of
5 in the table of contents -- and I'm just -- is the date and time
6 stamps, such as when the file was created, when it was last
7 written to, meaning that the file was edited and saved, and also
8 when was the file last accessed, meaning that it was opened or
9 something -- some program touched that file but not edited.

10 Q. Is there any evidence that the hard drive of Mr. Pepe's
11 computer was accessed after June 17th, 2006?

12 A. No.

13 Q. And how do you know that?

14 A. Well, I went through doing date/time analysis of the
15 defendant's hard drive from his computer and looked for activity
16 after it was seized and I did not find any activity after it was
17 seized.

18 Q. Did you find out when it was last shut down?

19 A. Yes. When you shut down a Windows computer, such as the
20 defendant's computer, Windows logs that shutdown activity as a
21 normal shutdown. And I believe that was on June 16th.

22 Q. All right.

23 Mr. Pixley, I would like to go back -- I would like to
24 go back to the Up North folder and talk about that a little bit.

25 In addition to the four directories that were visible

1 underneath that folder, were there any other files in the Up
2 North folder?

3 A. Yes. There were some files and digital photographs in the
4 Up North folder.

5 Q. What did you learn about those digital photographs in the
6 Up North folder for the root level?

7 A. Those photographs were taken with a -- the Minolta DImage
8 camera.

9 Q. That's the S414 model?

10 A. Yes.

11 Q. You said that in the Friends 111111 directory, there were
12 Canon PowerShot photographs; is that correct?

13 A. There were photos taken with a Canon PowerShot camera.

14 Q. Did any of the digital images in the Friends 111111
15 directory correspond with images that you found on the hard
16 drive?

17 A. No.

18 Q. Were there any photographs in the Friends 111111 series
19 that corresponded with any photographs that you found in the
20 Cache directory of the hard drive where the albums are kept by
21 the PhotoShow Deluxe?

22 A. No.

23 Q. And, by the way, how many album files were in the PhotoShow
24 Deluxe directory?

25 A. There was 81 albums there.

1 Q. Let's talk about the contents of Friends 111111.

2 Did you find homemade, for lack of a better word,
3 digital images in this folder?

4 A. Yes.

5 Q. Approximately how many digital images or photographs were
6 in the Friends 1111 folder?

7 A. There was approximately 130, 134 digital photographs.

8 Q. And what camera or cameras were used to take the images in
9 the Friends 111111 folder?

10 A. Well, of those -- of those images, the only indicator that
11 I found was the Canon PowerShot SD100.

12 Q. Were there any other programs that you found that accessed
13 any of those digital images?

14 A. Yes.

15 Q. What did you find?

16 A. Well, in analyzing those digital photographs, when you edit
17 a photograph using other software and, as we showed last week
18 with the digital camera, the -- a digital photograph, inside
19 that photograph is information about the make and model and date
20 and time of the camera that took that picture.

21 If you use software to edit that picture, a couple
22 things happen. One is the software that's used to edit that
23 picture will often imbed information about that editing software
24 within the digital photograph. In some cases, it will
25 completely replace the camera information. So in some cases,

1 you'll see where -- not only will you still see the original
2 camera information in that software, in the photograph --

3 MR. GUNN: Excuse me, Your Honor. I have an objection
4 to this testimony on Rule 16 grounds.

5 THE COURT: Well, I can understand but I can't rule on
6 it. Mr. Lulejian, do you need to move on to another topic?

7 MR. LULEJIAN: I think it's certainly relevant --

8 THE COURT: Well, relevance has nothing to do with
9 Rule 16. Discuss it with Mr. Gunn and see if you can resolve
10 this or otherwise I would have a sidebar.

11 MR. LULEJIAN: If the Court would give me one moment.

12 THE COURT: Yes.

13 (Mr. Lulejian and Mr. Gunn confer off the record)

14 MR. GUNN: We can't resolve it, Your Honor.

15 (Sidebar conference commenced)

16 MR. LULEJIAN: What Mr. Pixley is going to testify to,
17 Your Honor, is about the properties of the files found in this
18 Friends directory. He is going to testify that the camera
19 information was stripped out of a number of these programs --
20 out of a number of these files because they were edited with an
21 image processing software. The reason that's relevant --

22 THE COURT: I don't care why it's relevant. The
23 Rule 16 objection doesn't go to relevance, does it?

24 MR. GUNN: No, Your Honor.

25 MR. LULEJIAN: Well, we talked about we would disclose

1 him as very broad, what he was going to find. He was going to
2 look at the folders. Mr. Gunn, in fact, has even told us that
3 he wants to be able to have Mr. Pixley available to call up
4 individual files, presumably not only to look at those files and
5 identify the location but to document other properties
6 associated with those files. I don't think this is much of a
7 stretch, given the fact that he is looking at the media and
8 analyzing it. He is simply pulling up a property associated
9 with the file that the Defense has had on their hard drive and
10 could certainly do the same thing.

11 THE COURT: That is not the point of Rule 16. The
12 point of Rule 16 is what did you disclose to him that your
13 expert was going to testify to, if I am understanding your
14 objection correctly.

15 MR. GUNN: My understanding is he is going to testify
16 about this Friends 111111 directory having a different camera.
17 That was not disclosed, frankly. I wasn't going to object to
18 that.

19 Now he is going to testify that some of those images
20 were PhotoShopped. There is nothing in any report about that.
21 There may be some general reference that he is going to testify
22 about characteristics of the photos, but they have to say what
23 he is going to say. And this a surprise. I don't know where
24 it's going, but, frankly, in the exercise of caution, I feel a
25 need to object because I haven't been able to talk to my expert

1 about it. My expert wasn't able to read a report about this and
2 then look at the computer to see what she thought and give me
3 feedback about how and why it's important and not important,
4 what implications it might have for our theory of defense.
5 That's the kind of thing I should know --

6 THE COURT: Where was it in your report?

7 MR. LULEJIAN: Where was it in my report?

8 THE COURT: Where was it in the report of Mr. Pixley's
9 testimony?

10 MR. LULEJIAN: Mr. Pixley did not describe all the
11 cameras associated with every single file. He talked about the
12 Minolta --

13 THE COURT: Did he talk about PhotoShopping?

14 MR. LULEJIAN: No, he did not.

15 THE COURT: Then he is not going to testify.

16 (Sidebar conference ended)

17 BY MR. LULEJIAN:

18 Q. Mr. Pixley, were you able to determine when the Friends
19 111111 folder was created on the thumb drive?

20 A. This would be on July -- I believe it was on July 8th.

21 Q. What year?

22 A. This would be in 0 --

23 Q. Do you need to refer to your notes, sir?

24 A. Yeah. I do need to refer to my notes, please.

25 THE COURT: You may do that.

1 THE WITNESS: Thank you.

2 2005.

3 BY MR. LULEJIAN:

4 Q. Were there any other folders created on that date?

5 A. Yes, there was. This was also the Nary 2 folder was
6 created on that date.

7 Q. Did you have an opportunity to examine the Applications
8 program folder on the hard drive?

9 A. Yes.

10 Q. And did you find any viewing software for a Minolta DImage
11 camera?

12 A. Yes, I did.

13 Q. And when were -- and were you able to determine when the
14 camera was first connected to the computer?

15 A. That was on June 4th.

16 Q. And were you able -- and when was the software for the
17 Minolta DImage camera installed on that computer?

18 A. Also on June 4th.

19 Q. Does the viewing software for the Minolta DImage camera
20 come with the camera itself?

21 A. Yes, it does.

22 Q. Is it part -- is it standard with Windows XP?

23 A. No, it's not.

24 Q. Mr. Pixley, you said it was installed on June 4th.
25 June 4th of what year?

1 A. This would be 2005.

2 Q. When you say June 4th of 2005, do we add 185 days to that?

3 A. No. The clock on the computer is different than the camera
4 clock.

5 Q. Why is that?

6 A. Well, the clock -- or the camera has a clock which is
7 maintained by a battery, just like the computer has a clock that
8 is maintained by a battery as well. And they are completely
9 independent of each other.

10 Q. When you inspected the clock on the computer, were you able
11 to determine how accurate it was?

12 A. Yes.

13 Q. And how accurate was it?

14 A. It was off by seven minutes.

15 Q. And what time zone was it set for?

16 A. It was set to Cambodia, which is GMT plus seven hours.

17 Q. And were there any albums created in the Cache directory
18 before June 4, 2005?

19 A. No, there was not.

20 Q. And when was the Nero PhotoShow software installed on the
21 computer? Let me rephrase that. I'm sorry.

22 I'm sorry. Again, when was the viewing software
23 installed on the computer?

24 A. Which viewing software?

25 Q. The Minolta DImage.

1 A. June 4th.

2 Q. When did the albums first start appearing on -- in the
3 Cache directory of the hard drive?

4 A. I believe that was not until towards the end of September.

5 Q. What year?

6 A. 2005.

7 Q. I asked you a few minutes ago about the last time the hard
8 drive was accessed. And you testified that there was a normal
9 shutdown on June 16th of 2005. Could you -- I'm sorry. June --
10 I've got 2005 in the front of my brain, Mr. Pixley. I
11 apologize. Let me rephrase the question.

12 You testified a few minutes ago that the computer that
13 Mr. Pepe had was operating on June 16th of 2006 and there was a
14 normal shutdown that took place.

15 Were you able to determine whether or not the computer
16 was operating on June 17th of 2006, the date it was seized?

17 A. Yes.

18 Q. What did you find that led you to that conclusion?

19 A. Well, I still saw files being created and accessed on
20 June 17th. So -- and then there was no activity after that
21 time. That would be consistent with somebody just pulling the
22 power from the computer or the computer just losing power.

23 Q. On the hard drive did you find any viewing software for a
24 Canon PowerShot camera?

25 A. No, I did not.

1 Q. Last week, Mr. Pixley, we talked about a number of emails
2 that you located on the defendant's computer. Approximately how
3 many were you able to find that were -- that were sent through
4 Hotmail?

5 A. Well, an exact count of how many messages were sent through
6 Hotmail, I couldn't tell you the exact number. I could tell you
7 that there were hundreds of files associated with Hotmail, but
8 not complete intact messages in all of those.

9 Q. Did you have to -- did you have to reconstruct those
10 messages in order to view them?

11 A. Yes.

12 Q. And, again, where were the email fragments, for lack of a
13 better word, located that you were able to use to reconstruct
14 the emails?

15 A. These are web pages that are located in the user's Cache
16 folder.

17 Q. Mr. Pixley, I am going to ask you to take a look --
18 actually last week, Mr. Pixley, I showed you three emails,
19 Exhibit Nos. 2009, 2010, and 2011.

20 Do you have those handy?

21 A. Yes.

22 Q. I believe you testified last week or -- last week that you
23 put together a chart which you had identified as Exhibit 2099
24 that listed the time and dates associated with each of those
25 emails; is that correct?

1 A. Yes, it is.

2 Q. Okay.

3 I'm going to show you Exhibit No. 2009. Can you see
4 that?

5 A. Yes. I have it in front of me as well.

6 Q. Were you able to determine when this email message was
7 sent?

8 A. Yes.

9 MR. GUNN: Objection, Your Honor. Asked and answered
10 yesterday, I believe.

11 THE COURT: Not yesterday but I think we heard it last
12 week, didn't we?

13 MR. LULEJIAN: You're probably right, Your Honor.
14 I'll move on.

15 Q. Let me move on to the second email then, Mr. Pixley. This
16 is Exhibit No. 2010.

17 Were you able to recover a date associated with this
18 email?

19 MR. GUNN: Objection. Asked and answered.

20 THE COURT: I think we did that, Mr. Lulejian, and I
21 allowed you to show the chart, even though I didn't allow it
22 into evidence. So I think this subject has been covered. If
23 I'm wrong, you can go into it again, but I seem to recall it.

24 MR. LULEJIAN: I am trying to remember. We were
25 rushing at the end of the day, Your Honor. I just wanted to

1 just elicit the information orally since the chart is not coming
2 in.

3 THE COURT: All right.

4 MR. LULEJIAN: I will be very brief, Your Honor.

5 Q. What was the date that you determined that the email 2010
6 was created? Or sent?

7 A. May 14th, 2006, at 5:36 p.m.

8 Q. Showing you Exhibit No. 2011, were you able to determine
9 the time and date of that email?

10 A. Yes.

11 Q. And when was that message sent?

12 A. June 3rd, 2006, at 6:15 p.m.

13 Q. I notice that there is no time or date headers on any of
14 these emails.

15 How were you able to determine when they were sent?

16 A. This is based on the file-created times of these web pages
17 stored on the defendant's hard drive.

18 Q. Mr. Pixley, I am going to ask you to take a look at
19 Government Exhibit No. 2101 for purposes of identification.

20 A. I need to get up since it fell.

21 THE COURT: Okay.

22 THE WITNESS: I have it in front of me.

23 BY MR. LULEJIAN:

24 Q. Mr. Pixley, what is Exhibit No. 2101?

25 A. These are thumbnail images that were stored in a -- one of

1 the photo albums.

2 Q. Which -- I'm sorry. Which album was that?

3 A. I believe this is album No. 32 or 33 entitled Kun, K-U-N.
4 I'm sorry. Kia.

5 Q. Let's get a clear record.

6 The thumbnails in that -- in -- the thumbnails you are
7 looking at, Exhibit 2101, what album were they from?

8 A. This would be in the Kia album.

9 Q. And that was stored where?

10 A. This was on the defendant's hard drive in the PhotoShow
11 Deluxe album.

12 Q. And did you have an opportunity to compare that exhibit to
13 the Kia album located on the defendant's -- the image of the
14 defendant's hard drive?

15 A. Yes.

16 Q. How do you know -- and does that -- and does that
17 Exhibit 2101 contain all the photographs for the thumbnails that
18 were in the Kia album on the hard dive?

19 A. Yes, it does.

20 Q. How do you know?

21 A. Well, I went through each one of these and compared it to
22 the album itself on the hard drive.

23 MR. LULEJIAN: Your Honor, the Government would move
24 Exhibit 2101 into evidence.

25 MR. GUNN: Just our prior objection, Your Honor.

1 THE COURT: All right. That will be admitted.

2 (Government's Exhibit 2101 was received)

3 MR. LULEJIAN: One moment, Your Honor.

4 Your Honor, I think I can safely say I have no further
5 questions.

6 THE COURT: All right, thank you. Mr. Gunn?

7 MR. GUNN: Thank you, Your Honor. If I could get a
8 little more organized here.

9 CROSS-EXAMINATION

10 BY MR. GUNN:

11 Q. Mr. Pixley, just touching on that last topic before going
12 to a couple of other things, you said that 32 or 33 Kia album
13 was on the computer's hard drive?

14 A. Yes.

15 Q. But it wasn't -- it was not on the hard drive in My
16 Pictures; right? It was on the hard drive in this sort of Cache
17 album thumbnail area; right?

18 A. That's correct.

19 Q. It was only there in the thumbnail form?

20 A. Yes.

21 Q. Going to some other topics first, and we'll come back to
22 that, you testified, I believe on direct, about how the physical
23 computer items you examined were not the actual original
24 computer items?

25 A. Meaning that they are a forensic image?

1 Q. Correct.

2 A. Yes.

3 Q. You didn't examine the actual hard drive; you examined
4 what's called an EnCase image of it?

5 A. Correct.

6 Q. You didn't examine the actual thumb drive, you examined
7 what was called an EnCase image of it?

8 A. Correct.

9 Q. EnCase image is an image created by this EnCase software,
10 without changing anything, with what is called a write-block on
11 the original device; right?

12 A. Correct.

13 Q. You examined either EnCase, or what are called ISO images
14 of the CD's, rather than the original CD's; right?

15 A. No, I made images of the CD's.

16 Q. All right.

17 And were those also EnCase images or ISO images?

18 A. Some of each.

19 Q. Okay.

20 So you examined -- you didn't examine the original
21 CD's but you examined either EnCase images or ISO images of the
22 CD's?

23 A. Correct.

24 Q. And it's standard forensic computer examination procedure
25 to use images like that for forensic analysis rather than the

1 original items; correct?

2 A. Correct.

3 Q. And there's a reason for that procedure; right?

4 A. Yes.

5 Q. And the reason is to keep the computer, the original
6 computer item, from being changed either accidentally or on
7 purpose; right?

8 A. Correct.

9 Q. It's important to make sure that the original item isn't
10 tampered with or changed in any way; right?

11 A. Correct.

12 Q. You also testified about images that you recovered from
13 what you called the unallocated space of the computer and other
14 items?

15 A. Yes.

16 Q. You used special computer software to do that?

17 A. Yes.

18 Q. One example is a computer software program called EnCase?

19 A. Yes.

20 Q. And that's a software program that's very commonly used by
21 forensic computer experts; correct?

22 A. Correct.

23 Q. Did you find any EnCase software on Mr. Pepe's computer?

24 A. No.

25 Q. Did you find any other type of forensic recovery software?

1 A. No.

2 Q. So there wasn't anything you found on his computer that
3 would have let him recover things from unallocated space?

4 A. No.

5 Q. You also testified about several images you recovered from
6 what's called the recycle bin; did I hear that correctly?

7 A. Correct.

8 Q. The recycle bin is where files or folders go when they're
9 deleted; right?

10 A. Yes.

11 Q. People usually don't store things in the recycle bin that
12 they want to keep; correct?

13 A. Not normally.

14 Q. That's because things eventually disappear from even the
15 recycle bin; right?

16 A. Correct.

17 Q. They either all disappear when a person does what's called
18 empty the recycle bin?

19 A. Yes.

20 Q. Or when it gets too full, it just starts emptying itself;
21 right?

22 A. That is correct.

23 MR. GUNN: Your Honor, could I step over and get some
24 water?

25 Q. You also testified about dates you attached to the various

1 digital photographs or images you found on the computer;

2 correct?

3 A. Yes.

4 Q. There's a date that is embedded in the image or with a
5 file, computer file, by the camera; right?

6 A. Yes.

7 Q. And then there's the date that you ended up estimating was
8 the actual date the photograph was taken; right?

9 A. That is correct.

10 Q. And you concluded that there was basically a 185-day
11 difference?

12 A. Yes.

13 Q. And, for example, you found a folder with photos called
14 Girls 031606 and you assumed from the name of that folder that
15 those were photos taken on March 16th, 2006; right?

16 A. Or in that time frame, yes.

17 Q. And you found that the embedded camera date was 185 days
18 earlier than that; right?

19 A. If that's the exact one. I don't have --

20 Q. You found several like that; correct?

21 A. Yes.

22 Q. And you consistently found a 185-day differential; right?

23 A. That was the average.

24 Q. Well, that was what it was in most cases; right?

25 A. Yes.

1 Q. The few times there was a little bit of difference; right?

2 A. That is correct.

3 Q. But in at least some, if not all of those cases, there were
4 multiple photos in the folder and for some of them it was the
5 185 days and for others it was a little different; right?

6 A. That is correct.

7 Q. So that would be consistent with a person taking
8 photographs on several days and then making the album on the
9 185th day; right?

10 A. Yes.

11 Q. One of the folders you found in the My Pictures directory
12 on Mr. Pepe's computer was called Disabled Children 052606;
13 correct?

14 A. Yes.

15 Q. Now, are you looking at your computer to check that?

16 A. No.

17 Q. If you need to, feel free. Just let us know if you need
18 to, all right?

19 A. I will.

20 Q. Okay. Your Honor, could I have approach and have an
21 exhibit marked?

22 THE COURT: You may.

23 MR. GUNN: It's premarked but I will submit it. I
24 have an original, Your Honor, with an original exhibit tag and a
25 copy for the Court. And this would be Defense Exhibit 380, if I

1 didn't already indicate.

2 THE COURT: Thank you.

3 Any objection to this exhibit?

4 MR. LULEJIAN: Not to the pictures, Your Honor, but I
5 would argue that it's 608.

6 THE COURT: Pardon?

7 MR. LULEJIAN: No, Your Honor.

8 THE COURT: All right. That's in evidence.

9 (Defendant's Exhibit 380 was received)

10 MR. GUNN: Thank you, Your Honor.

11 Q. The Disabled Children 52606 folder had a number of photos
12 in it; correct?

13 A. Yes.

14 Q. Can you compare Defense Exhibit -- you have -- you have
15 your EnCase images up there on a laptop computer; right?

16 A. I do.

17 Q. What I would like you to do is compare Defense Exhibit 380
18 to the EnCase image you have on your computer for the Disabled
19 Children 052606 folder and tell us if Defense Exhibit 380
20 appears to be hard copy printouts of all the photographs in the
21 Disabled Children 052606 folder in the EnCase image.

22 THE COURT: Well, I am going to allow him to take a
23 quick look and give his thoughts on that. I'm not going to take
24 the time to have him compare side-by-side each one of these many
25 photographs, sir.

MR. GUNN: Maybe we can do it this way, Your Honor.

Q. Does Defense Exhibit 380 have a series of sequential numbers on each photo, starting with Pict 0001 and going through Pict 0046?

A. Yes.

Q. And is that the same number of photos in the Disabled Children folder on the EnCase image?

A. Yes.

Q. And can you tell you us, if, for example, Picture 1 and Picture 46 at least match up?

A. Yes.

Q. And why don't you randomly check No. 20 and tell us if that matches up.

A. Yes.

Q. So it at least appears that the hard copies there are the same as the ones on the computer; correct?

A. Correct.

Q. Now, on the computer in the EnCase image you can find dates attached to those images or digital photographs the way you did for others; right?

A. Yes.

Q. And the date that's attached to those photos is November 23, 2005; correct? 11/23/05?

A. That's embedded?

Q. Yes.

1 A. Yes.

2 Q. And 11/23/05 is 185 days before 5/26/06; isn't it?

3 THE COURT: Are you representing that that's what it
4 is?

5 MR. GUNN: I will represent that, if the Government
6 and the Court is willing to accept my representation,
7 Your Honor.

8 THE COURT: Close enough.

9 MR. GUNN: I did it with my fingers. Actually I do
10 want it to be exact, Your Honor, if there's any doubt.

11 THE COURT: Well, I am not having him count 185 days.

12 MR. GUNN: All right. Well, I guess the jury can
13 always do that if it wants.

14 Q. Is it fair to say that your conclusion would be that the
15 photos in the Disabled Children 52606 folder were taken on
16 May 26th, 2006?

17 A. Yes.

18 MR. GUNN: Your Honor, I would like -- actually, I
19 think these exhibits are already in evidence, Defense Exhibits
20 368 and 369. If I could have those placed before Mr. Pixley.

21 THE CLERK: They are.

22 THE COURT: Do we have them? Who has them?

23 MR. GUNN: 368 and 369. I will put 369, if I could,
24 on the ELMO, Your Honor.

25 THE COURT: Okay. If you're going to show it, I don't

1 think we need to worry about giving it to him.

2 MR. GUNN: Actually, I am just going to show the one,
3 though I could show both -- actually, I can start asking him
4 questions but I would like him to eventually look at both.

5 Q. This is a photo of three girls on a balcony; correct?

6 A. Yes.

7 Q. And it has a file number on it of Pict 00014; correct?

8 A. Yes.

9 MR. GUNN: And, Your Honor, I will represent, if I
10 can, that 368 has three girls in a different position on a
11 balcony and has Pict number of 0013.

12 THE COURT: All right, Thank you.

13 BY MR. GUNN:

14 Q. You got that, Mr. Pixley?

15 A. I see that.

16 Q. No, no, the second one, Defense Exhibit 368, has Pict 0013?

17 A. I have it.

18 Q. Now I'd like you to compare those photographs, those
19 Defense exhibits, to the photos with those same Pict numbers in
20 the My Pictures directory on your EnCase image of Mr. Pepe's
21 computer that has the name of Girls 042706.

22 Could you compare those and tell if Defense exhibits
23 368 and 369 match Pict 0013 and Pict 0014 in that folder, Girls
24 042706, in your EnCase image?

25 A. Yes.

1 Q. And those photos have a date -- a camera-embedded date
2 attached to them; correct?

3 A. Yes.

4 Q. And that date is 10/18/05; correct?

5 A. Yes.

6 Q. So using your 185 difference conclusion, that would mean
7 these photos were taken on 4/21/07; correct?

8 Again, Your Honor, I will represent that is the case.

9 THE COURT: All right.

10 BY MR. GUN:

11 Q. But let me just represent that to you. And --

12 MS. DONAHUE: '07?

13 MR. GUNN: If I said 07, Your Honor, I meant '06.

14 THE COURT: Be careful what you're representing,
15 Mr. Gunn.

16 MR. GUNN: I should.

17 Q. And do you have Government Exhibit 13 -- well, do you have
18 your chart that shows dates -- your chart or charts that shows
19 dates for photographs? I think it would be Government
20 Exhibit 2094, if I'm reading this -- Mr. Lulejian's correctly.
21 Chronology of selected non-pornographic digital photographs?

22 I'm sorry, let me take that back.

23 Look at 2093.

24 A. I don't have that.

25 Q. This is it, correct? Do you want me to zoom in?

1 A. Please.

2 Q. That's the summary you prepared; right?

3 A. Yes.

4 Q. And you included dates for some photographs in Girls
5 042706; right?

6 A. Yes.

7 Q. And Government Exhibits 1338 through 1346 you have
8 concluded when you added 185 days to 10/18/05, were taken on
9 April 21, 2006; right?

10 A. Correct.

11 Q. Now, that's a little different than the 4/27/06 date in the
12 title of the folder; right?

13 A. Yes.

14 Q. But there's some additional photographs in that folder
15 later on that have a camera-embedded date six days later of
16 10/24/06; correct?

17 A. I could refer to my notes, if you would like.

18 Q. Please do or refer to your EnCase image, whatever is
19 easiest.

20 A. There are three camera dates in that folder.

21 Q. And some of the dates are 10/24/06; correct?

22 A. Yes.

23 Q. Which is six days later than 10/18/06?

24 A. Yes.

25 Q. Or '05 it's actually; right?

1 A. Yes.

2 Q. And so it would make sense that the -- adding the 185 days
3 to those would then give you the 4/27/06 date, six days later
4 than the 4/21/06 date; right?

5 A. Yes.

6 Q. So some of the photographs -- the last photographs, in
7 fact, in that folder are consistent with 04/27/06 date; right?

8 A. Yes.

9 Q. So again that's consistent with your opinion about the
10 185-day differential?

11 A. Yes.

12 Q. And so your opinion would be that Defense exhibits 368 and
13 369 were taken on April 21st, 2006; correct? Remember Defense
14 exhibits 368 and 369 you agreed were six days earlier?

15 A. Yes. I guess I'm showing that those -- those days, based
16 on the folder date, would be 191 days off.

17 Q. Well, but actually -- by the folder date you mean the date
18 and the name of the folder?

19 A. Yes.

20 Q. But those pictures, in fact -- all the pictures in the
21 folder we know, in fact, were not taken on the same day; right?

22 A. That is correct.

23 Q. We know that some of them were taken on a date that the
24 camera had down as 10/18/05, albeit that date was wrong; right?

25 A. Yes.

1 Q. And some of them were taken on a date that the camera had
2 down as 10/24/06; right? Or '05.

3 A. Yes.

4 Q. So the ones that were taken on 10/18/05 were taken six days
5 before the ones that were taken on 10/24/05; correct?

6 A. Yes.

7 Q. And 185 days from 10/24/05 would be 4/27/06; right?

8 A. Yes.

9 Q. So the actual date for the 10/24/05 photos would be
10 4/27/06?

11 A. Which photographs?

12 Q. The ones that the camera dated as 10/24/06.

13 A. I'm following you, yes.

14 Q. So the ones that were taken -- that the camera dated as
15 10/18/06 would have been actually taken on 4/21/06 -- I'm sorry.

16 The ones that the camera dated as 10/18/05 would
17 actually have been taken six days earlier on 4/21/06; correct?

18 A. Correct.

19 Q. So Defense exhibits 368 and 369, which are Pict 0013 and
20 Pict 0014, have a camera embedded date of 10/18/05; right?

21 A. Yes.

22 Q. So they were taken, in your opinion, on April 21st, 2006;
23 correct?

24 A. Correct.

25 Q. So the girls in that picture, all of them, were at that

1 location on that date; correct?

2 A. Correct.

3 Q. They weren't there -- that girl wasn't there on only
4 May 23rd or May 26th; correct? I'm sorry, I will withdraw that
5 question, Your Honor.

6 You testified also about the computer photo software
7 that Mr. Pepe used; right?

8 A. Yes.

9 Q. It was a software program called Nero PhotoShow Express?

10 A. Yes.

11 Q. If you use that program to put photos on a computer, you
12 first attach the camera with the photos on it; right?

13 A. Correct.

14 Q. And the program then prompts you with a question about
15 where you want to put the photos?

16 A. As far as creating an album? Yes.

17 Q. There is also a default that the album goes into a folder
18 called My Pictures or a directory called My Pictures; right?

19 A. Yes.

20 Q. All right. The program then asks you -- it actually asks
21 you sort of what directory or what area you want to put them in
22 first and then it asks you whether you want to put them in a new
23 album; right? Or an existing album?

24 A. It prompts you for an album name.

25 Q. Or it gives you the option of putting them into an album

1 that already exists; right?

2 A. Correct.

3 Q. So first it asks you do you want to put them in a new album
4 or one that already exists; right?

5 A. Yes.

6 Q. Then it prompts you to name the album if it's a new album?

7 A. Yes.

8 Q. Then there is a default that goes into My Pictures which is
9 sort of a general larger folder of the computer; right?

10 A. It goes into a sub folder of My Pictures.

11 Q. Or becomes a sub folder of My Pictures, if it's a new
12 album; right?

13 A. Yes.

14 Q. And the program then saves -- well, strike that.

15 And in going through the process, the photo software
16 program also creates another folder with what you've called the
17 thumbnail versions of the photographs; right?

18 A. Yes.

19 Q. And thumbnails are basically small, miniature versions;
20 right?

21 A. Yes.

22 Q. They're about probably less than two inches by two inches?

23 A. Correct.

24 Q. And whereas a photograph in My Pictures fills the whole
25 screen unless you decide to narrow it down; right?

1 A. Yes.

2 Q. And the thumbnail versions aren't stored in the My Pictures
3 folder, are they?

4 A. No.

5 Q. They're stored in another location on the computer; right?

6 A. Yes.

7 Q. In what's called the Windows profile?

8 A. In the user's profile?

9 Q. Is that what it's called?

10 A. Well, I'm referring to it as the user's profile.

11 Q. Okay.

12 And so basically in a chain of folders or sub folders,
13 they're in a sub folder called Albums, there's a sub folder
14 called Cache, there's a sub folder of another sub folder, and
15 there is sort of a chain you would go down to get to that Cache
16 album sub folder; right?

17 A. Right.

18 Q. Now, you can also delete albums that you put in My
19 Pictures, can't you?

20 A. Yes.

21 Q. Or you can move them to another location; right?

22 A. Yes.

23 Q. That could include moving them to another folder or
24 location on the computer?

25 A. Yes.

1 Q. Or it could include moving them to another computer storage
2 device like a thumb drive or a -- what we commonly a CD, what
3 you have called an optical disk?

4 A. Correct.

5 Q. You could stick a thumb drive or CD in the computer and
6 transfer them onto that; correct?

7 A. You could copy them on there.

8 Q. Or you could actually move them or cut-and-paste them or
9 transfer them; right?

10 A. Yes.

11 Q. And one way of doing -- either deleting or cutting and
12 pasting and moving is to go directly to the My Pictures
13 directory without using the photo software program; right?

14 A. Yes.

15 Q. And you could basically do that in three or four easy steps
16 on the computer; right?

17 A. I would agree with that.

18 Q. You click on the Start button that's in the lower left-hand
19 of the computer?

20 Let me -- let me have an exhibit marked, Your Honor,
21 if I could.

22 THE COURT: Okay.

23 MR. GUNN: If we could call this 225, Your Honor.

24 THE COURT: All right.

25 (Defendant's Exhibit 225 was marked)

1 MR. GUNN: If I could approach, Your Honor.

2 THE COURT: Yes.

3 MR. GUNN: There is an original in color and, with the
4 Court's permission, a black-and-white photocopy for the Court.

5 Q. Would you look at Defense Exhibit 224 -- or it's actually
6 225, I believe. And actually, Your Honor, I'm sorry, can I give
7 him the original with the exhibit tag? I gave him the wrong
8 one.

9 THE COURT: Okay. Any objection to this exhibit?

10 MR. LULEJIAN: No, Your Honor.

11 THE COURT: This is in evidence.

12 (Defendant's Exhibit 225 was received)

13 BY MR. GUNN:

14 Q. Let me go to the first page of Defense Exhibit 225 on the
15 screen here. Let's see if we can make sure I have it right as
16 to how one would delete a photo in My Pictures.

17 Is that better screen wise?

18 Is this the first page of Defense Exhibit 225?

19 A. Yes.

20 Q. And to delete a photograph from My Pictures, the first
21 thing you do is you click on the Start button down here; right?

22 A. This is one way. So I'll follow along here.

23 Q. All right.

24 One way you could do is click on the Start button
25 here; right?

1 A. Yes.

2 Q. And then you'd get something like the second page of
3 Defense Exhibit 225; right?

4 A. Yes.

5 Q. And then you'd go up here to My Pictures and click on it;
6 right?

7 A. Yes.

8 Q. First you would click on Documents and then you would click
9 on My Pictures?

10 A. Correct.

11 Q. And then you'd get the third page of Defense Exhibit 225;
12 right?

13 A. Yes.

14 Q. And you would highlight whatever you wanted to delete;
15 right?

16 A. Yes.

17 Q. And you would right-click on it?

18 A. Yes.

19 Q. And you'd click Delete; right?

20 A. Yes.

21 Q. And then you'd -- at least on some computers -- get
22 something asking you basically are you sure that's what you want
23 to do?

24 A. Correct.

25 Q. Like this page in Defense Exhibit 225?

1 And you would click Yes; right?

2 A. Yes.

3 Q. And then in your My Pictures directory, the folder that you
4 deleted would no longer show?

5 A. That is correct.

6 Q. Now, another option you would have going through that same
7 process, instead of Delete, you could choose Cut; correct?

8 A. Yes.

9 Q. And if you chose cut -- actually, Your Honor, if I could
10 have another exhibit marked, 224.

11 THE COURT: All right.

12 (Defendant's Exhibit 224 was marked)

13 THE COURT: Any objection to 224?

14 MR. LULEJIAN: No, Your Honor.

15 THE COURT: 224 is in evidence.

16 (Defendant's Exhibit 224 was received)

17 BY MR. GUNN:

18 Q. 224 shows the same initial steps but then shows Cut
19 selected on the third or fourth page; correct?

20 A. Yes.

21 Q. So you would click on Cut; right?

22 A. Yes.

23 Q. If you wanted to move it.

24 And then it would show you the different places you
25 could put it; right?

1 A. You would have to choose this.

2 Q. Right. But it would show you these options like on the
3 page we have in front of us now; right?

4 A. Yes.

5 Q. And you could choose someplace on the C drive, which would
6 basically be the computer hard drive; right?

7 A. Yes.

8 Q. Or you could choose someplace on the E drive, which might
9 be a thumb drive?

10 A. Yes.

11 Q. Or if you had a CD in the computer, it might show an option
12 for the CD drive; right?

13 A. Yes.

14 Q. And then you would select one of those and you would get a
15 screen somewhat like we have on this page that would say, for
16 example, Removable Disk E at the top; right?

17 A. Correct.

18 Q. And then you'd right-click on it and choose Paste; right?

19 A. Correct.

20 Q. And then that would move or put the folder on the thumb
21 drive or CD or whatever you're working with?

22 A. Yes.

23 Q. And it would show up now on the directory for that drive;
24 right?

25 A. Correct.

1 Q. And it would no longer be in My Pictures, right, if you had
2 cut-and-pasted as opposed to copied?

3 A. That is correct.

4 Q. And if you delete -- either delete or cut-and-paste an
5 album like that, the photo software program no longer displays
6 the album any more; right?

7 A. That is correct.

8 Q. When you go into the -- it's not in My Pictures; right?
9 Once you have done that?

10 A. Correct.

11 Q. And also you can go into the photo software to look at your
12 albums; right?

13 A. Yes.

14 Q. And you get a list of albums?

15 A. Yes.

16 Q. And it would no longer be in that list of albums if you had
17 done one of those things; correct?

18 A. Correct.

19 Q. And that's true even though the folder of thumbnails in the
20 Cache album sort of sub folder that we talked about is still
21 there; right?

22 A. Correct.

23 Q. That's still out there in the computer somewhere?

24 A. Yes.

25 Q. But to find them, you would have to first know they're

1 still out there somewhere, and second, know where in the user
2 profile to look for them; right?

3 A. Correct.

4 Q. And even if you did find them, they would be in this tiny
5 miniature form instead a regular picture form; right?

6 A. That is correct.

7 Q. Now, a number of albums on Mr. Pepe's computer fit this
8 pattern, didn't they?

9 MR. LULEJIAN: Objection. Vague.

10 THE COURT: Sustained.

11 MR. GUNN: All right. I'll --

12 Q. There were a number of albums that you found in this sort
13 of thumbnail Cache albums sub folder out there in another part
14 of the computer; right?

15 A. Yes.

16 Q. That were not in My Pictures; right?

17 A. That is correct.

18 Q. So that could mean that they had been deleted; right?

19 MR. LULEJIAN: Calls for speculation.

20 THE COURT: Overruled.

21 THE WITNESS: Yes.

22 BY MR. GUNN:

23 Q. It could also mean -- another possibility would have been
24 that they had been moved or cut-and-pasted to another computer
25 storage device like a CD or thumb drive the way we just showed;

1 right?

2 A. Correct.

3 Q. And if something -- by the way, if something is deleted, it
4 usually goes into the recycle bin; right?

5 A. Yes.

6 Q. If something is cut-and-pasted or moved, it doesn't go into
7 the recycle bin, does it?

8 A. No.

9 Q. And only one of the albums that was missing from Mr. Pepe's
10 My Pictures directory was in the recycle bin; correct?

11 A. I believe that's correct.

12 Q. So that would suggest that all the other albums were moved
13 or cut-and-pasted to some other storage device not on the
14 computer; right?

15 A. No. There is another way that you can delete.

16 Q. Right. You can do it by hitting the Shift key and then
17 Delete; right?

18 A. Yes.

19 Q. But if someone didn't uses that special method, then the
20 other explanation would be that the items had been
21 cut-and-pasted and moved instead of being deleted; right?

22 A. Correct.

23 Q. You did find some of the missing albums on a CD that was
24 found in Mr. Pepe's house, didn't you?

25 A. Yes.

1 Q. That would -- to start, there was a CD which you and the
2 agents called CD 1?

3 A. Yes.

4 Q. And on that CD you found there was an album in Mr. Pepe's
5 Cache album sub folder out there on that space on the computer
6 called Home 102805; correct?

7 A. Correct.

8 Q. You found that also on the -- on CD 1; right?

9 A. Correct.

10 Q. Then there was an album out in that Cache albums list of
11 folders called Four Girls; right?

12 A. Yes.

13 Q. That was also on CD 1; right?

14 A. Yes.

15 Q. And then there was an album out there on the Cache albums
16 area called SKD and New Girl; correct?

17 A. Correct.

18 Q. That was also on CD 1; right?

19 A. Correct.

20 Q. And those were all found in what is called the allocated
21 space of CD 1; right?

22 A. Correct.

23 Q. That means they were on the CD in a way where a regular
24 person with regular photo viewing software could open the
25 folders and look at the photos; right?

1 A. Yes.

2 Q. But you also found photos from other albums that you have
3 testified about, at least some of which were child pornography,
4 in what's called the unallocated space of CD 1; right?

5 A. Correct.

6 Q. The unallocated space of a CD is things that can be viewed
7 only by using special forensic recovery software; right?

8 A. Correct.

9 Q. Like the EnCase software that you use?

10 A. Yes.

11 Q. So it's not -- you used this analogy of a book without a
12 table of contents, but you can still thumb through and see the
13 pages, the chapters?

14 A. Yes.

15 Q. It's not quite right because it's more like -- isn't it --
16 because here it's more like you need a special thumb to see the
17 pages; would that be fair?

18 MR. LULEJIAN: Objection, Your Honor. Vague.

19 MR. GUNN: Let me try to rephrase it, Your Honor.

20 THE COURT: Okay.

21 Q. You used an analogy on direct, I think, that when something
22 is deleted from the CD, it's just like taking something out of
23 the table of contents but it's still there in the book and you
24 can thumb through and read it; is that correct?

25 A. Yes.

1 Q. But to carry your analogy a little bit further, in the case
2 of deleted items on a CD, you can actually only read the pages
3 if you've got sort of a special thumb, if you have sort of
4 special forensic recovery software; right?

5 A. Special thumb?

6 Q. Okay.

7 Well, on a CD when things are deleted from the table
8 of contents --

9 A. Yes.

10 Q. -- and you say you can still go through and read them;
11 right?

12 A. Correct.

13 Q. That's only if you have special forensic recovery software;
14 right?

15 A. Correct.

16 Q. You can't just read them with a regular computer or
17 computer program?

18 A. Correct.

19 Q. Whereas a book without a table of contents you could read
20 through and read the pages with your regular eyes; right?

21 A. Yes.

22 Q. You wouldn't need any special eyes?

23 A. Correct.

24 Q. So it's a little bit different?

25 A. Yes.

1 THE COURT: Let's take a break, Mr. Gunn.

2 Ladies and gentlemen don't talk about the case or form
3 or express any opinions about the case until it's finally
4 submitted to you. We will take a 15 minute break.

5 (Recess taken)

6 (Jury In)

7 THE COURT: Everybody is back. The witness is back on
8 the stand.

9 Sir you are still under oath.

10 Mr. Gunn, you may continue.

11 MR. GUNN: Thank you, Your Honor.

12 Q. Mr. Pixley, you testified a little bit on direct about a
13 thumb drive that you analyzed?

14 A. Yes.

15 Q. A thumb drive is called a thumb drive -- at least that's
16 one name for it -- because it's about the size of a thumb; is
17 that right?

18 A. Correct.

19 Q. And it's typically used as something that people carry
20 around so they can move computer data from one computer to
21 another computer or to a CD on another computer or something
22 like that?

23 A. To transport data, yes.

24 Q. And it's usually used to transport it from one computer to
25 another computer or one computer to another form of computer

1 media like a CD or -- which you would have to use on another
2 computer, I guess?

3 A. I have seen them used as backup devices.

4 Q. Okay.

5 But commonly they're used to transfer -- as a sort of
6 transfer device?

7 A. I don't know if there is a common use for it. Everybody
8 has different reasons or different ways of how they use it.

9 Q. I would now like you to look, if I could, at Defense
10 Exhibit 226.

11 Your Honor, I am not going to be offering this into
12 evidence. I am just having it marked for identification.

13 THE COURT: All right.

14 MR. GUNN: There is an extra copy for the Court.

15 (Defendant's Exhibit 226 was marked)

16 Q. Exhibit 226 is a list you prepared of all the albums you
17 found in this Cache albums folder out there in the user profile
18 on the computer, right?

19 A. Correct.

20 Q. And that's the one with the thumbnails in it; right?

21 A. Yes.

22 Q. And each album has a number and then an underline and then
23 a name; right?

24 A. Yes.

25 Q. And this -- this -- this list you prepared has a column

1 indicating which ones of those albums you found on CD 1;

2 correct?

3 A. Yes.

4 Q. It indicates that by the word Match in that column; right?

5 A. Yes.

6 Q. And then it says either Allocated or Recovered; correct?

7 A. Correct.

8 Q. And Allocated means it was in the allocated space where it
9 could be viewed without any special forensic recovery software?

10 A. Yes.

11 Q. And Recovered means it could only be viewed after you used
12 special forensic recovery software to recover it from the
13 unallocated space; correct?

14 A. Yes.

15 Q. And then this table also indicates which of the albums in
16 this Cache albums folder out there were still in the My Pictures
17 folder; correct?

18 A. Yes.

19 Q. There is a column that says Status of Imaged Folder?

20 A. Yes.

21 Q. And you put either Missing or Allocated?

22 A. Yes.

23 Q. Missing means it was not in the My Pictures folder any
24 more; correct?

25 A. Correct.

1 Q. And Allocated means it was still in the My Pictures folder?

2 A. Yes.

3 MR. GUNN: Your Honor, could I approach with another
4 exhibit?

5 THE COURT: Yes.

6 MR. GUNN: If we could call this 251, Your Honor.

7 (Defendant's Exhibit 251 was marked)

8 BY MR. GUNN:

9 Q. Would you now look at Defense Exhibit 251. Do you have
10 that in front of you?

11 A. Yes.

12 Q. Is that a table with one column headed Cache Albums and
13 another column headed Other Location?

14 A. Yes.

15 Q. And does it also list all the albums found in the Cache
16 albums folder on Mr. Pepe's computer?

17 A. They're -- they're out of order, so --

18 THE COURT: Is this a document he prepared?

19 MR. GUNN: No, it's one I prepared, Your Honor. I am
20 asking him if it's accurate.

21 THE COURT: I am not going to make him do that. It
22 would take him a long time to do that.

23 MR. GUNN: Your Honor, may I represent to the Court or
24 seek the stipulation from the Government?

25 THE COURT: Well, you can represent to the Court if

1 that's helpful, but I'm not having this witness just spend lots
2 of time here analyzing things that he wasn't given in advance.

3 You can talk to the Government.

4 MR. GUNN: All right. And actually if I could ask him
5 one question first.

6 Q. You mentioned that the list was out of order, correct?

7 A. It appears out of order.

8 Q. That's because the one is at end of the double digit number
9 starting with one and the two is at the double digit number
10 starting with 20 and the three is at the end of the double digit
11 number starting with 30; correct? And so on?

12 A. Hang on a second, please. It appears this way, yes.

13 Q. That's actually the order they come up in when you look at
14 them on a list in the EnCase folder image; right?

15 A. No, not necessarily.

16 Q. Well, when you go into EnCase, they'll at least sometimes
17 come up that way; right?

18 I will withdraw the question.

19 (Whereupon Mr. Gunn and Mr. Lulejian confer off the record)

20 BY MR. GUNN:

21 Q. Does that -- does that exhibit have in the Other Location
22 column entries for My Pictures, CD 1 Allocated and CD 1
23 Allocated in various locations?

24 A. You said CD 1 Unallocated and CD 1 allocated?

25 Q. Correct. There are some entries that say CD 1 Allocated

1 and some entries that say CD 1 Unallocated?

2 A. Correct.

3 Q. And there is some that say My Pictures?

4 A. Yes.

5 Q. And do the CD 1 Allocated and the CD 1 Unallocated entries
6 correspond to your table, Defense Exhibit 226?

7 A. Let me go through this.

8 Yes.

9 Q. And there are several columns -- there are several entries
10 for My Pictures in the right-hand column of this table; correct?

11 A. Yes.

12 Q. The folder -- the Cache albums folder 13_Oh So Extra has an
13 entry for My Pictures; correct?

14 A. Yes.

15 Q. And that matches what you found in your list in Defense
16 Exhibit 226; right?

17 A. Yes.

18 Q. And 18_Wedding 082705 is also listed as having an Other
19 Location in My Pictures; correct?

20 A. Yes.

21 Q. And that matches with your list in Defense Exhibit 226;
22 correct?

23 A. Yes.

24 Q. And the Cache albums folder called 35_Water Festival has an
25 entry in Defense Exhibit 251 for My Pictures; correct?

1 A. Yes.

2 Q. And that matches up with your list in Defense Exhibit 226;
3 correct?

4 A. Yes.

5 Q. And the album in Cache albums called 41_Girls 121505 is
6 listed as having another location in 251 of My Pictures;
7 correct?

8 A. Yes.

9 Q. And that matches up with your list in Defense Exhibit 226;
10 correct?

11 A. Yes.

12 Q. And the same is true for the albums -- the Cache albums
13 folders 55_Invitations and 58 Girls 020906? Those you found in
14 My Pictures, and this table, Defense Exhibit 251, list, is in My
15 Pictures; correct?

16 A. Yes.

17 Q. And the folders in Cache albums 59_Girls 022 -- 022006 and
18 60_Bat and Thea in Defense Exhibit 251 are listed as having
19 Another Location in My Pictures; correct?

20 A. Correct.

21 Q. And that corresponds to what you indicated in your list
22 that is marked as Defense Exhibit 226; right?

23 A. Yes.

24 THE COURT: Mr. Gunn, if you plan on going through
25 each of these, would you please discuss with the Government for

1 a moment what you are going to do so we can get a stipulation.

2 This is a waste of time.

3 MR. GUNN: All right.

4 (Whereupon, Mr. Gunn and Mr. Lulejian confer off the record)

5 MR. GUNN: Your Honor, subject to confirming my
6 representation, the Government has agreed to let me offer this
7 into evidence.

8 THE COURT: All right. That's 251 is conditionally in
9 evidence, thank you.

10 (Defendant's Exhibit 251 was received)

11 MR. GUNN: If I could consult with the Government
12 about publishing just part of this exhibit, Your Honor.

13 THE COURT: Thank you.

14 (Whereupon, Mr. Gunn and Mr. Lulejian confer off the record)

15 BY MR. GUNN:

16 Q. Mr. Pixley, I am going to publish just a part, just the
17 left-hand column on my list for now. This is Defense
18 Exhibit 251. I would like -- you can look at your hard copy
19 exhibit if you want. Subject to the Government confirming.

20 This is the way -- the folders in Cache albums are
21 listed in this format of a number and then an underline and then
22 the name of the album; right?

23 A. Correct.

24 Q. For example, 10_house 061605; correct?

25 A. Yes.

1 Q. Or 11_Mack's friends?

2 A. Correct.

3 Q. And the number symbolizes the order in which the albums
4 were created; correct?

5 A. Yes.

6 Q. So you know that Mack's Friends was created after House
7 061605?

8 A. Correct.

9 Q. And on this list here -- and actually on your list itself,
10 Defense Exhibit 226, there's, among other folders, one called
11 32_Kia and one called 33_Nap and Kia; correct?

12 THE COURT: That doesn't sound right. You may --

13 MR. GUNN: I am sorry. I reversed the numbers.

14 Q. There is one called 32_Nap and Kia and one called 33_Kia;
15 correct?

16 A. 32 is Nap and Kia 2. And 33 is Kia.

17 Q. And the actual name in the Cache albums is 32_Nap and Kia 2
18 and 33_Kia; right?

19 A. Correct.

20 Q. And then there is one called 35_water festival; right?

21 A. Yes.

22 Q. And we know from the numbering convention that 35_water
23 festival would have been created after 32_Kia and 33_ -- I'm
24 sorry -- 32_Nap and Kia 2 and 33_Kia; correct?

25 A. Yes.

1 Q. And am I correct in understanding that you would be able to
2 tell us the dates the photos in 35_water festival were taken
3 using your -- using the camera-embedded date and your 185-day
4 adjustment?

5 A. Yes.

6 Q. And could you tell us, using your EnCase images if you need
7 to, what that date would be? Start off with the camera-embedded
8 date.

9 A. The first picture in that series has a camera date of
10 May 15th, 2005.

11 Q. And would you look at Government Exhibit 2096. That's your
12 summary of pornographic digital photographs.

13 A. I don't believe I have a copy of that up here any more.

14 Q. If we could have it handed to the witness, Your Honor. Or
15 if it's in evidence, we could have the . . .

16 That has camera dates for the 33_Kia photos and the
17 32_Nap and Kia 2 photos of May 8, 2005 and May 7, 2005
18 respectively; correct?

19 A. Correct.

20 Q. So the 35_water festival photographs were taken at least
21 eight days -- seven or eight days after the 33_Kia and 32_Nap
22 and Kia 2 photographs; correct?

23 A. Well, there is -- the first picture in the water festival
24 series is dated May 15th, 2005.

25 Q. So that would be seven days after and eight days after,

1 depending on which of these other two folders we're talking
2 about; right?

3 A. Right. But the last picture in that series of water
4 festival is dated May 21st, 2005.

5 Q. So that would be even more. That would be like almost two
6 weeks later, correct?

7 A. Correct.

8 Q. So the 35 -- the photos in 35_water festival were taken
9 between seven -- between one and two weeks, depending on the
10 photo -- after the photos in 33_Kia and 32_Nap and Kia 2;
11 correct?

12 A. Yes.

13 Q. And using your 185-day adjustment, you concluded that the
14 33_Kia photos and the 32_Nap and Kia 2 photos were taken on
15 November 9th and November 8th of 2005; correct?

16 A. Correct.

17 Q. So the water festival photos would have been taken, using
18 that same adjustment, between November 16th and about November
19 23rd; correct?

20 A. That's approximate.

21 Q. So if someone moved into the house during or after the
22 water festival photos, that would have been after the photos in
23 33_Kia and 32_Nap and Kia 2 were taken; correct?

24 MR. LULEJIAN: I am going to object, Your Honor.

25 THE COURT: Sustained.

1 MR. GUNN: I believe I have no further questions at
2 this time, Your Honor. I believe 251 was conditionally admitted
3 subject to the Government reviewing it.

4 THE COURT: Correct.

5 Mr. Lulejian?

6 MR. LULEJIAN: A couple quick questions, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. LULEJIAN:

9 Q. Mr. Pixley, would you please look at Defense Exhibit
10 No. 380.

11 A. I have it.

12 Q. What camera took those photographs?

13 A. The Minolta DImage S 414 camera.

14 Q. Would you please take a look at Defense Exhibit No. 368.

15 A. I need a reference as to what folder this picture was in.

16 Q. I think it's in Girls 42706.

17 A. I found it.

18 Q. And what camera took that photograph?

19 A. The Minolta DImage S414.

20 Q. And the next photograph in the series, 369, I think it's
21 number -- Picture No. 0014 in that same directory.

22 A. The picture name again, please?

23 Q. It would be 00014.

24 A. Minolta DImage S414.

25 Q. I would ask you to take a look at Defense Exhibit No. 224

1 which I am going to put on the overhead.

2 Mr. Pixley, is this the same desktop that Mr. Pepe had
3 on his computer?

4 A. Yes.

5 Q. Were all the same programs on that desktop?

6 A. From what I recall, this is an accurate representation.

7 MR. LULEJIAN: One moment please, Your Honor.

8 THE COURT: Sure.

9 BY MR. LULEJIAN:

10 Q. Mr. Pixley, would you please take a look at Government
11 Exhibit 1339, which I'm putting up on the overhead. And I would
12 ask you to take a look at 1340 on the overhead.

13 Do you know when those photographs were taken?

14 A. Not without having a reference to go back to, no.

15 Q. If I put up your chart, Government Exhibit No. 2093, would
16 that assist you?

17 A. Yes, it would.

18 Q. 1339 and 1340.

19 A. All right. I see it.

20 Q. When were those pictures taken?

21 A. Well, the camera date was October 18th, 2005, with an
22 adjusted date of April 21st, 2006.

23 Q. Mr. Pixley, a few minutes ago Defense counsel outlined two
24 different ways of deleting files -- or folders. They were
25 represented in the Exhibits 224 and 225.

1 Do you recall that?

2 A. Yes.

3 Q. Are there other -- is there other ways somebody else could
4 delete a file or folder off the computer other than what the
5 Defense outlined?

6 A. Yes.

7 Q. Would you please explain how that would take place.

8 A. Well, one of the methods would be to highlight the file or
9 folder and using Shift/Delete as a function. Another method
10 would be to actually open up a command prompt, a DOS window and
11 you could delete files that way and that would delete files.

12 MR. LULEJIAN: I have no further questions,
13 Your Honor.

14 THE COURT: Mr. Gunn?

15 MR. GUNN: Nothing further.

16 THE COURT: Thank you, sir. You're excused.

17 MR. LULEJIAN: Your Honor, the United States would
18 call Noah Craft.

19 THE COURT: All right. Let's let Mr. Pixley put away
20 his gear first.

21 THE CLERK: Please stand next to the court reporter
22 and raise your right hand to be sworn.

23 Noah Craft, Government's witness, was sworn

24 THE CLERK: Thank you. Please take the witness stand.
25 Please state your full name and spell your last name for the

1 record.

2 THE WITNESS: My name -- good morning. My name is
3 Noah Craft. That's C-R-A-F-T.

4 THE COURT: You may proceed.

5 MR. LULEJIAN: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 Q. Good morning, sir.

8 A. Good morning.

9 Q. What do you do for a living?

10 A. I'm a dermatologist.

11 Q. Dr. Craft, what is a dermatologist?

12 A. Dermatologist is a physician who is an expert in skin and
13 diseases of the skin.

14 Q. Would you please explain to the jury what you do as a
15 dermatologist.

16 A. I am an assistant professor at UCLA, and I function in many
17 roles. As an assistant professor, I'm the course chair of the
18 medical student course in dermatology. Also in direct care of
19 patients, taking care of their skin and skin problems. And I'm
20 the associate program director for the residency program at my
21 hospital, training the residents in dermatology.

22 Q. Dr. Craft, I am going to ask you to speak into the
23 microphone, speak slowly so the court reporter can hear
24 everything that you say.

25 A. Okay.

1 Q. How long have you been at UCLA Medical Center?

2 A. I've been there since 2000.

3 Q. And have you had to attend medical school to become a
4 dermatologist?

5 A. I did.

6 Q. Where did you go?

7 A. I was at UCLA as well.

8 Q. And what degrees do you hold, sir?

9 A. I have an MD, medical degree, and a Ph.D. in molecular
10 biology.

11 Q. And where are you licensed to practice medicine?

12 A. In the State of California.

13 Q. Are you board certified?

14 A. Yes, I am.

15 Q. What does it mean to be board certified?

16 A. The American Board of Dermatology certifies dermatologists
17 who have trained in an approved residency program for four years
18 and have taken the Board of Dermatology, which is a written
19 examination.

20 Q. So you're board certified in the field of dermatology?

21 A. That's correct.

22 Q. Do you hold any other diplomas?

23 A. I also have a diploma in tropical medicine and hygiene from
24 the London School of Hygiene and Tropical Medicine.

25 Q. When did you receive that?

1 A. In 2005.

2 Q. Have you published any articles or books?

3 A. I have published several.

4 Q. During the course of your career, approximately how many
5 patients have you examined?

6 A. Hard to quantify, but thousands. Certainly.

7 Q. Dr. Craft, are you familiar with the use of digital
8 photography in dermatology?

9 A. I am very familiar with the use of digital photography in
10 dermatology. I am the editor in a company called Logical Images
11 which is based on using digital images of the skin to help train
12 physicians to identify skin lesions.

13 Q. So how does that work, Doctor?

14 A. Basically physicians who are having trouble making a
15 diagnosis can compare actual skin to digital images of skin and
16 improve their diagnostic accuracy that way.

17 Q. Are you familiar with the term called teledermatology?

18 A. I am, yes.

19 Q. What does that term mean?

20 A. Teledermatology is a practice where one physician takes a
21 photograph, a digital image of a patient's skin, and emails that
22 or sends it to a dermatologist to ask for a diagnosis of that
23 skin lesion and assistance with the patient care.

24 Q. And, Dr. Craft, have you had any experience in reviewing
25 digital images that were sent to you by other physicians?

1 A. Yes, I have.

2 Q. Approximately how many images have you looked at over the
3 course of your career?

4 A. Dozens or hundreds, certainly.

5 MR. LULEJIAN: Your Honor, at this point the
6 United States would offer Dr. Noah Craft as an expert in the
7 area of dermatology.

8 THE COURT: Mr. Gunn?

9 MR. GUNN: No objection.

10 THE COURT: All right. He is an expert in that field.

11 BY MR. LULEJIAN:

12 Q. Dr. Craft, in January of this year, did you physically
13 examine the defendant in this case?

14 A. Yes.

15 Q. And where did you examine -- and where did you examine the
16 defendant?

17 A. In the courthouse here.

18 Q. Here in the Roybal building?

19 A. Yes.

20 Q. And on what date was that?

21 A. January 31st, this year.

22 Q. And why did you examine the defendant?

23 A. I was asked to examine the defendant to determine if I
24 could identify skin markings on the defendant and compare them
25 to evidence or images that were obtained from the suspect's

1 computer.

2 Q. Who asked you to do that?

3 A. Initially Special Agent Eddie Wang.

4 Q. It was the Government that asked you?

5 A. It was the Government, exactly.

6 Q. Do you see the defendant in court today?

7 A. I do.

8 Q. Could you please point to him and identify an article of
9 clothing he is wearing?

10 A. He is seated at the table over here. He has a dark suit
11 coat on.

12 Q. There are three people sitting at the table. He is closest
13 or farthest away from you?

14 A. He is closest to me. He is holding glasses in his hand.

15 THE COURT: Indicating the defendant, Mr. Pepe.

16 MR. LULEJIAN: We will get it right one of these
17 times, Your Honor.

18 Q. Dr. Craft, I am going to show you what has been admitted as
19 Government Exhibit 1327.

20 Have you seen this photograph before?

21 A. Yes.

22 Q. What does this photograph depict?

23 A. This photograph depicts a middle -- Mr. Pepe or a
24 middle-aged --

25 Q. Sorry. This is 1327. I apologize.

1 A. Right. Mr. Pepe, the defendant standing naked next to a
2 young girl.

3 Q. And, Dr. Craft, what lesions or markings on the defendant
4 are prominent in this photograph?

5 A. At this resolution, you can see on his left upper inner
6 thigh a fleshy growth near the base of his penis.

7 Q. Dr. Craft, I am zooming in on the region near the
8 defendant's groin.

9 Where is that lesion or mark?

10 A. On my screen, it's about halfway between your cursor and
11 the scrotum. I don't know if you can point to it.

12 Q. Am I pointing to it?

13 A. That's correct.

14 Q. Dr. Craft, I am going to ask you now to take a look at
15 another photograph that has been admitted into evidence,
16 Government Exhibit No. 1328.

17 Do you recognize this photograph?

18 A. I do.

19 Q. What does this photograph depict?

20 A. This is the defendant standing naked next to a young girl.

21 Q. And are there any markings or prominent lesions in this
22 photograph?

23 A. There is. There is the same fleshy growth on the left
24 upper inner thigh close to the penis.

25 Q. Dr. Craft, I am going to zoom in once again into the region

1 of the inner thigh.

2 Dr. Craft, is the growth visible there?

3 A. It is.

4 Q. I am moving my cursor about an inch or so away from the
5 penis.

6 Is this where the lesion is?

7 A. That's correct.

8 Q. Dr. Craft, I am now going to show you what has been marked
9 as Government Exhibit -- been admitted as Government Exhibit
10 No. 1329.

11 Do you recognize this photograph?

12 A. Yes, I do.

13 Q. What does this photograph depict?

14 A. This is the defendant, Mr. Pepe, standing naked next to a
15 different young girl.

16 Q. What lesions or markings on the defendant are prominent in
17 this photograph?

18 A. On the left upper inner thigh you can see the same fleshy
19 growth.

20 Q. Zoom in now.

21 Dr. Craft, is the cursor near where that -- that
22 fleshy growth that you described was?

23 A. Yes.

24 Q. Dr. Craft, I am now going to show you what has been
25 admitted as Government Exhibit No. 1330.

1 Have you seen this photograph before?

2 A. Yes, I have.

3 Q. What does this photograph depict?

4 A. This photograph also depicts Mr. Pepe standing naked next
5 to the same young girl.

6 Q. What lesions or markings are prominent on the defendant in
7 this photograph?

8 A. Again, on the left upper inner thigh you can see the fleshy
9 growth near the scrotum.

10 Q. Let me zoom in again, Doctor.

11 Is the fleshy growth visible in this close-up?

12 A. Yes, it is.

13 Q. Is it at or near where the cursor is, approximately one,
14 one and a half inches from the penis?

15 A. Yes.

16 Q. On January 31st of 2008, did you have the opportunity to
17 examine the defendant's left inner thigh?

18 A. Yes, I did.

19 Q. What did you see when you examined the defendant's left
20 inner thigh?

21 A. On the subject -- on the defendant's left upper inner
22 thigh, in the area where I expected to find a fleshy growth, I
23 find a firm pink papule that I felt was consistent with a scar.

24 Q. You have used some words that are beyond me.

25 What is a firm pink papule?

1 A. Pink is obvious. Papule means a firm bump.

2 Q. And what did you do with that firm pink papule other than
3 look at it?

4 A. I also stretched the skin around it and felt it for its
5 texture.

6 Q. And what were you able to tell about that pink papule from
7 the texture?

8 A. From feeling it and moving the skin around it, you could
9 tell it was firm and it also had a central groove to it.

10 Q. Did you take a photograph of that scar?

11 A. Yes, I did.

12 Q. I'm going to show you what has been marked as Government
13 Exhibit No. 2103. It should be in front of you.

14 A. I have it.

15 Q. What does this photograph depict?

16 A. This is a photograph I took on January 31st of the
17 defendant's left upper inner thigh. Right in the center of it
18 you can see the area that I thought was a scar.

19 MR. LULEJIAN: Your Honor, the Government would move
20 2103 in evidence and ask to publish.

21 THE COURT: Any objection?

22 MR. GUNN: No, Your Honor.

23 THE COURT: Admitted.

24 (Government's Exhibit 2103 was received)

25 BY MR. LULEJIAN:

1 Q. Dr. Craft, where was the scar located in this photograph?

2 A. It's pretty much right in the center of the picture there.

3 Q. When you say center of the picture --

4 A. Basically as he is pulling the scrotum to the side, it's a
5 couple of inches -- exactly. Right there.

6 Q. Is my cursor, which is approximately three inches in from
7 the inside of the -- inside of the thigh, where the -- where you
8 saw the scar tissue?

9 A. Yes, it is.

10 Q. And I'm going to show you now -- ask you to take a look at
11 what has been marked as Government Exhibit 2104 for purposes of
12 identification.

13 What does this photograph depict?

14 A. This is a photograph of the defendant I took on
15 January 31st. It's a close up of the same area of the left
16 upper inner thigh depicting the same scar.

17 MR. LULEJIAN: Your Honor, the Government would move
18 2104 into evidence and ask to publish it.

19 THE COURT: Any objection?

20 MR. GUNN: Your Honor, may I review the --

21 THE COURT: Sure.

22 MR. GUNN: If I could confer with counsel.

23 (Mr. Gunn and Mr. Lulejian confer off the record)

24 MR. GUNN: No objection, Your Honor.

25 THE COURT: 2104 is admitted.

(Government's Exhibit 2104 was received)

BY MR. LULEJIAN:

Q. Dr. Craft, where is the scar tissue in this photograph?

A. Again, it's pretty much right in the center of the photograph. If you move your cursor to the left, it's right there.

Q. Dr. Craft, based on your review of the paragraphs that I showed you earlier, Government's Exhibits 1327, 28, 29, and 30 -- that's the one with the defendant with the two girls -- where did you expect the fleshy growth to be?

A. I expected to find the fleshy growth exactly in the area of the scar where your cursor is now on the left upper inner thigh.

Q. And the -- what, if anything, did you do to further analyze this photograph?

A. Well, when I was examining the defendant, I stretched the skin and palpated it, as I mentioned, and to further analyze this photograph, I enlarged it and cropped it.

Q. You zoomed in on it?

A. Exactly.

Q. Did that help you reveal the scar?

A. It did.

Q. I am going to ask you to please take a look at what has been marked for identification as Government Exhibit 2105.

Do you recognize that photograph?

A. I do.

1 Q. What is it?

2 A. This is a cropped close-up of a picture I took on
3 January 31st that shows centrally the scar identified
4 previously.

5 MR. LULEJIAN: Your Honor, the Government would move
6 2105 into evidence.

7 THE COURT: Any objection?

8 MR. GUNN: No, Your Honor.

9 THE COURT: All right. That's admitted.

10 (Government's Exhibit 2105 was received)

11 BY MR. LULEJIAN:

12 Q. Dr. Craft, what are we looking at in this photograph?

13 A. This is a close-up of the scar identified on physical
14 examination and you can see the outline of it. It's a pink bump
15 and it's firm when you touch it. You can see going from the
16 right upper side to the left lower side the linear groove that I
17 spoke about earlier.

18 Q. Is this the groove that you're describing right here?

19 A. It is.

20 Q. How do you know it's scar tissue, Doctor?

21 A. Scar tissue is typically firm to the touch and can have a
22 central indentation as I described.

23 Q. What would lead to a scar like this forming?

24 MR. GUNN: I have a Rule 16 objection to this
25 testimony. May I consult with counsel?

(Mr. Gunn and Mr. Lulejian confer off the record)

MR. GUNN: Your Honor, I don't think we have an agreement.

(Sidebar conference commenced)

MR. LULEJIAN: Your Honor, this is Dr. Craft's initial report. In his report he outlined his findings, he outlined -- he outlined the fact that he did a physical examination at which Defense counsel was present. He talked about the photographs he used. He talked about circling the lesion of growth. He talked about where the lesion was, which is now identified with a red circle. At this site the suspect was found to have what appeared to be a linear pink scar. It showed -- is shown at higher magnification in the PowerPoint.

THE COURT: Where in his report does he opine as to the causes of the scar?

MR. GUNN: Or the characteristics, Your Honor.

MR. LULEJIAN: I don't -- he did not actually come out and say in his report exactly what caused the scar, but I think as a fact that he is talking about the scar, and the fact that he is --

THE COURT: There is nobody on that jury who doesn't think the scar was from the mole coming off. You don't need it.

MR. LULEJIAN: All right, Your Honor.

MS. DONAHUE: That's just describing the scar.

MR. GUNN: Your Honor, I actually -- I think I should

1 have objected earlier, frankly. I move to strike everything --

2 THE COURT: I am not striking anything.

3 (Sidebar conference ended)

4 BY MR. LULEJIAN:

5 Q. Dr. Craft, on January 31st of this year, did you also
6 examine the defendant's body for skin markings?

7 A. Yes.

8 Q. Was it your understanding that the purpose was so that you
9 could compare the markings on the defendant with photographs
10 that were seized from his computer media?

11 A. Yes.

12 Q. What type of markings were you looking for?

13 A. I was looking for any easily identifiable skin markings but
14 in particular, markings that are considered relatively
15 permanent.

16 Q. What do you mean by relatively permanent?

17 A. I mean skin markings that wouldn't change very much over
18 time, over years.

19 Q. Could you give an example to the Court and the jury of what
20 a marking wouldn't change over time would be?

21 A. Birthmarks is an example. A nevus -- or a synonym for
22 nevus is mole -- common term for a mole -- are relatively
23 permanent over time.

24 Q. And what is a mole?

25 A. A mole is a collection of cells that make pigment or the

1 dark color in your skin, and they're typically well-demarcated
2 tan or brown circles or ovals on the skin.

3 Q. And when do moles form?

4 A. Moles can form at any time over a person's life, but you
5 typically have all of the moles you're going to have by age 40
6 or 50.

7 Q. Do you lose moles over time?

8 A. You can lose moles very slowly over time as well.

9 Q. How rapid is that process?

10 A. Excuse me?

11 Q. Excuse me. My apologies.

12 How rapid is that process?

13 A. Typically you might expect someone to gain or lose one to
14 two moles per year.

15 Q. So why would you seek out and use moles in your comparison?

16 A. Moles are --

17 MR. GUNN: Objection. Irrelevant.

18 THE COURT: Sustained.

19 BY MR. LULEJIAN:

20 Q. I am going to show you what has been marked as Government's
21 Exhibits No. 2106 through 2110 which are in front of you.

22 MR. GUNN: Your Honor, I don't know that -- I need
23 other copies or identification of the exhibits. . .

24 MR. LULEJIAN: Does Counsel have them?

25 MR. GUNN: Yes, Your Honor.

1 THE COURT: Okay.

2 BY MR. LULEJIAN:

3 Q. Doctor, what are Exhibits 2106 to 2110?

4 A. These are pictures of Mr. Pepe that I took on January 31st.

5 MR. LULEJIAN: Your Honor, at this point the
6 Government would move Exhibits 2106 to 2110 into evidence.

7 THE COURT: Any objection?

8 MR. GUNN: No objection.

9 THE COURT: Those are admitted. Thank you.

10 (Government's Exhibits 2106 to 2110 were received)

11 BY MR. LULEJIAN:

12 Q. Doctor, what effect does weight gain or loss have on moles?

13 A. Weight gain or loss has very little effect on moles. The
14 biggest effect would be it may change slightly the distance they
15 are from each other. The example might be if you have a balloon
16 and you mark five dots on the balloon and then you blow it up
17 slightly further the dots would be in a similar position but
18 they would be slightly further from each other.

19 Q. Okay.

20 Now, going back to Exhibits 2106 to 2110, were you
21 asked to compare the skin markings that you observed on the
22 defendant to the skin markings on several photographs recovered
23 from the defendant's computer media?

24 A. Yes, I was.

25 MR. GUNN: Objection, Your Honor. Beyond the scope of

1 the Court's ruling on this issue.

2 THE COURT: Overruled.

3 BY MR. LULEJIAN:

4 Q. Doctor, I am going to show you on the computer a number of
5 photographs that are in evidence. Would you please tell the
6 Court whether you have examined these photographs as part of
7 your comparison.

8 This is Exhibit No. 1522. Do you recognize this?

9 A. Yes.

10 Q. Did you use this photograph as part of your examination and
11 comparison?

12 A. Yes, I did.

13 Q. Showing you what has been admitted as Government No. 1524.

14 Do you recognize this photograph?

15 A. Yes, I do.

16 Q. Is this one of the photographs you used in your
17 examination -- used in your comparison?

18 A. Yes.

19 Q. Showing you what has been marked as Government Exhibit
20 No. 1531.

21 Is this one of the photographs that you used in your
22 comparison?

23 A. Yes.

24 Q. Showing you what has been marked as Government Exhibit
25 No. 1327.

1 Is this one of the photographs that you recognize?

2 A. Yes.

3 Q. Was it one of the photographs used in your comparison?

4 A. Yes.

5 Q. Showing you what has been marked -- admitted as Government
6 Exhibit No. 1328.

7 Do you recognize this photograph?

8 A. Yes.

9 Q. Is this one of the photographs that you used in -- as part
10 of your comparison?

11 A. Yes.

12 Q. Showing you what has been marked as Government Exhibit
13 No. 1330.

14 Do you recognize this photograph?

15 A. Yes.

16 Q. Is this one of the photographs you examined as part of your
17 comparison?

18 A. Yes.

19 Q. And showing you what has been marked as Government Exhibit
20 No. 1329.

21 Do you recognize this photograph?

22 A. Yes.

23 Q. Is this one of the photographs that you used as part of
24 your comparison?

25 A. Yes.

1 Q. Doctor, did you prepare a PowerPoint presentation
2 reflecting the results of your comparison?

3 A. Yes, I did.

4 Q. Would this presentation be helpful to you in explaining
5 your findings to the jury?

6 A. Yes, it would.

7 Q. Would you please take a look at Government Exhibit
8 No. 2111.

9 What is this document?

10 A. This is the PowerPoint presentation of my comparisons --

11 Q. And --

12 A. -- of examinations.

13 Q. And who prepared this?

14 A. I prepared this.

15 Q. Does it accurately reflect your findings?

16 A. Yes, it does.

17 MR. LULEJIAN: Your Honor, at this point the
18 Government would move the PowerPoint presentation, which has
19 been marked as 2111, into evidence.

20 MR. GUNN: I would object to it being received in
21 evidence. If the witness -- as opposed to being used to
22 illustrate testimony subject to a slide-by-slide reservation of
23 rights.

24 THE COURT: All right.

25 MR. LULEJIAN: May I then publish it to the -- may I

1 show it to the jury then, Your Honor?

2 THE COURT: Yes.

3 BY MR. LULEJIAN:

4 Q. Dr. Craft, what is the first photograph that we're looking
5 at?

6 A. This is a photograph of the defendant, Mr. Pepe, standing
7 next to a young girl. I used this as a baseline for identifying
8 moles on the defendant.

9 MR. GUNN: Objection, Your Honor. No question
10 pending. Move to strike.

11 THE COURT: Sustained. That will be stricken.

12 BY MR. LULEJIAN:

13 Q. Why did you use this photograph?

14 A. I used this photograph because it's known to be the
15 defendant.

16 Q. What did you hope to do with this photograph?

17 A. Identify skin markings on his body.

18 Q. And what did you hope to do once you found those skin
19 markings on his body?

20 THE COURT: Mr. Lulejian, we need to approach.

21 (Sidebar conference commenced)

22 THE COURT: I think you are going beyond my ruling. I
23 don't care what he hoped to do. I only want to know if he saw
24 markings on Pepe and markings on the other photographs.

25 MR. LULEJIAN: Okay. I am trying not to go beyond the

1 ruling.

2 THE COURT: Then don't ask him what he hoped to do. I
3 don't care what he hoped to do.

4 MR. LULEJIAN: Yes, Your Honor.

5 MR. GUNN: As I understood the Court's ruling, he
6 shouldn't refer to or talk about comparing.

7 THE COURT: That's -- I don't want the word "compare"
8 in there. If you need to take a break and tell him -- he is
9 pointing things out -- he is not to compare.

10 MR. LULEJIAN: We need to take a break to revise the
11 PowerPoint to do that, Your Honor.

12 (Sidebar conference ended)

13 THE COURT: Ladies and gentlemen, we are going to take
14 our 15 minute break. Don't talk about the case or form or
15 express any opinions about the case until it's finally submitted
16 to you.

17 (Recess taken)

18 (Jury Out)

19 THE COURT: Have you talked and resolved this now?

20 MR. LULEJIAN: We're getting there, Your Honor. First
21 of all, I did not mean --

22 THE COURT: You don't need to apologize. I just want
23 to make sure you and Mr. Gunn are on the same page.

24 MR. LULEJIAN: Mr. Gunn and I have gone through the
25 PowerPoint. We have made revisions that both of us are

1 comfortable with. Is that right, Carl?

2 MR. GUNN: Yes. There is one additional one.

3 MR. LULEJIAN: Which one?

4 MR. GUNN: No. 12. I think the word "comparison"
5 should not be in there either.

6 What we were talking about, Your Honor, is some of the
7 photos, the first sort of set -- if we can call it that -- is
8 clearly Mr. Pepe and the computer photograph. There is not any
9 dispute about that. But the Government is suggesting that a
10 comparison of those is still all right. And my position is it
11 should -- it really isn't. I mean, for one thing, it's not
12 really relevant if it's not disputed who it is anyway. And the
13 only other relevance it has is to basically start suggesting
14 that this is a way to identify people, which goes into the whole
15 issue. So that's what we were talking about just before the
16 Court came. I don't know if I am being clear.

17 THE COURT: Well, I did say that the doctor could
18 point out moles and the location of moles in the pictures.

19 MR. GUNN: Right. It would just be saying that he can
20 make a comparison of this one to that one.

21 THE COURT: He is not going to conclude that they are
22 the same person.

23 MR. LULEJIAN: No, Your Honor. The comparison that
24 Mr. Gunn is talking about is a photograph of Mr. Pepe with
25 L.K.xxx and then a photograph that Dr. Craft took of Mr. Pepe.

1 We just put them side by side so the jury can see that -- they
2 see the moles in the photograph, moles on a real person. Just
3 sort of as a benchmark.

4 And then with the next series of photographs goes to
5 the three photographs, the two oral copulation photograph and
6 then the ejaculation photographs and then just side-by-side of
7 what the doctor found with Mr. Pepe and then what he found in
8 those pictures, without any discussion of comparison whatsoever.

9 THE COURT: Is there an objection to that?

10 MR. GUNN: Well, my objection, of course, is to
11 everything. My understanding, the Court's ruling is that it
12 would probably allow that. It's going to allow the photographs
13 to be placed side-by-side in one exhibit. I mean that, I think,
14 is sort of getting on the line. My understanding was the Court
15 was going to allow that.

16 THE COURT: To the line but not over.

17 MR. LULEJIAN: And we have tried to excise the word
18 "comparison," Your Honor, as much as possible. When we use --
19 if it's still there when we have used it, it is just simply
20 comparing Photograph A with Photograph B without drawing any
21 conclusion.

22 THE COURT: All right.

23 MR. GUNN: As long as the witness knows he should not
24 talk about comparing the two images or identifying -- I guess he
25 can identify a mole as a mole but --

1 THE COURT: Right. Exactly. Okay. Are we set?

2 MR. LULEJIAN: Yes, Your Honor.

3 (Jury In)

4 THE COURT: Everyone is back. The witness is back on
5 the stand. Dr. Craft, you are still under oath.

6 Mr. Lulejian?

7 MR. LULEJIAN: Thank you, Your Honor.

8 Q. Dr. Craft, what is on this first slide?

9 A. This is the defendant, Mr. Pepe, standing next to a young
10 girl. Naked.

11 Q. On the next slide, what do we see?

12 A. These red boxes identify areas that were cropped for
13 enlargement.

14 Q. What did you do on the third slide?

15 A. On the third slide you can see the contrast has been
16 enhanced to identify dark lesions on a white background. And
17 additionally you can see black circles and black lines which on
18 future slides will identify moles.

19 Q. What is this slide?

20 A. This is a cropped area of the chest, so the upper red
21 square from the previous slide.

22 Q. This is Mr. Pepe's upper torso?

23 A. This is the defendant's upper torso.

24 Q. What have you done in this slide, Doctor?

25 A. In this slide I have circled moles or nevi with black

1 circles and connected with them with dash lines so the
2 relationship between them can be appreciated.

3 Q. And how many moles do you see in this photograph?

4 A. In this photograph, I have identified the five that are
5 easily identifiable.

6 Q. And do they form a pattern of any sort?

7 A. The pattern is identified by the dash lines so you can see
8 the angles and distances between the moles.

9 Q. Turning to next slide, what is this?

10 A. This is a photograph I took of Mr. Pepe on January 31st.

11 Q. Would have you done in this slide?

12 A. This is similar area of the upper torso of Mr. Pepe that I
13 cropped.

14 Q. And in this slide?

15 A. The image was enhanced with contrast to identify dark
16 lesions on the skin.

17 MR. GUNN: Your Honor, for the record, could we have
18 Mr. Lulejian refer to a slide number. I know my hard copy has
19 slide numbers.

20 THE COURT: That would be helpful, thank you.

21 BY MR. LULEJIAN:

22 Q. The one on the overhead now is Slide No. 9.

23 Turn to Slide No. 10. What have you done in this
24 photograph?

25 A. In this slide, side-by-side, the two images taken from the

1 upper torso of Mr. Pepe, one on January 31st by me, which is on
2 the right side as you look at it.

3 Q. And where is -- and the one on the left side, where is that
4 from?

5 A. That's from the image taken from the defendant's computer.

6 Q. Turn to Slide No. 11.

7 What do you see in this photograph or slide?

8 A. In this slide, I have rotated the image I took which is on
9 the right.

10 Q. Why did you do that?

11 MR. GUNN: Objection. Irrelevant, Your Honor.

12 THE COURT: Sustained.

13 BY MR. LULEJIAN:

14 Q. Turn to Slide No. 12.

15 What does this slide depict?

16 A. This slide depicts the pattern of moles taken from the
17 right side of the image, which is the defendant, on
18 January 31st, and overlays that pattern of moles on the left
19 image which is the -- taken from a picture of the defendant
20 taken from the defendant's computer.

21 Q. Turn now to Slide 13.

22 Again, what is this slide, Doctor?

23 A. This is a photograph of Mr. Pepe standing next to a young
24 girl.

25 Q. Turning to Slide 14, what does the red box represent?

1 A. This is an area I cropped for enlargement.

2 Q. Turning to Slide 15, what are we looking at here?

3 A. This is the area that was within the red box on the prior
4 slide that's been enlarged.

5 Q. What do you see in this slide?

6 A. In this slide, you can identify the fleshy growth --

7 MR. GUNN: Objection to "fleshy growth." Asked and
8 answered, Your Honor.

9 THE COURT: Overruled.

10 THE WITNESS: You can identify the fleshy growth that
11 we discussed earlier near the scrotum, and you can identify
12 several moles in the middle of the frame and to the upper right.

13 BY MR. LULEJIAN:

14 Q. Turn to Slide 16.

15 What have you done in this slide?

16 A. Here I have just used arrows to identify the things I just
17 discussed, the fleshy growth and the pattern of moles.

18 Q. Turning to Slide 17.

19 A. Here I have used the same type of contrast enhancement and
20 circled the moles with black circles and circled the fleshy
21 growth with a red circle.

22 Q. Where is the fleshy growth?

23 A. It's near the scrotum on the left upper inner thigh. In
24 this picture, it's in the left lower corner.

25 Q. How many moles do you see?

1 A. In this image I have identified five moles.

2 Q. Is there anything unusual about the cluster of moles in the
3 center?

4 A. The cluster of moles in the center there is nothing unusual
5 about it except that there are four moles in a certain position
6 to each other, and they form a pattern that looks like the
7 number 7.

8 Q. Let's turn to slide 18, Doctor.

9 What does this slide depict?

10 A. This is an image I took of the defendant's left upper inner
11 thigh on January 31st.

12 Q. Turning to Slide 19, what is in the red box?

13 A. The red box identifies an area I cropped for enlargement.

14 Q. Turning to Slide 20, what do we see here?

15 A. This is the area from the prior slide that was within the
16 red box. So this is the image from January 31st I took of the
17 defendant up close.

18 Q. And are you able to see markings in this photograph?

19 A. Yes. In this photograph you can see in the left lower
20 corner the scar I previously identified in testimony. And in
21 the middle of the photograph you can see the four moles that
22 look in the pattern like the number 7. And in the right upper
23 corner you can see another mole.

24 Q. I notice right underneath the box where it says "From
25 Exhibit 2000 -- 2103," there's some red marks there.

1 Why didn't you select those?

2 A. These marks most likely represent inflammation or infected
3 hair follicles. That would be a temporary skin marking.

4 Q. And again what were you looking for?

5 A. Permanent or relatively permanent skin markings.

6 Q. Turning to Slide No. 21, what have you done in this slide?

7 A. Here I have identified the skin lesions I previously
8 discussed. In the lower left corner is the scar circled with a
9 red circle. And then in the middle are the four moles circled
10 with black circles making a shape like the number 7. And in the
11 right upper corner is another mole.

12 Q. Turning to Slide 22.

13 What do we see in this slide?

14 A. This is a close-up of the same area of the defendant's left
15 upper inner thigh showing the scar and the four moles in more
16 close proximity.

17 Q. I notice to the left of the red circle there's a number of
18 darker marks. Blotches, one might say. What are those? Can
19 you tell?

20 A. Yeah. These appear to be post-inflammatory
21 hyperpigmentation. I know that's a technical term but it means
22 just pigment changes or darkening of the skin that you typically
23 find after you have infected hair follicles. And in this image
24 you can also see an infected hair follicle just below one of the
25 other markings.

1 Q. And how long do those post-inflammatory pigmentations last?

2 A. Typically on the order of weeks to months.

3 Q. Turning to Slide No. 23, what does this slide depict?

4 A. This is, again, another image of the scar that's been
5 enlarged and circled with a red circle. This is the same scar
6 from the left upper inner thigh of the defendant.

7 Q. Let's turn to Slide No. 24 now.

8 What have you done in this slide?

9 A. Slide 24 are two images. The left image is from the media
10 taken from the defendant's computer and shrunk down. But it's
11 the same moles identified with black circles and scar identified
12 with a red circle.

13 The right image is a photograph I took of the
14 defendant shrunk down in the similar way, showing moles on the
15 left upper inner thigh of the defendant on January 31st.

16 Q. One moment, please, Your Honor.

17 Let's now turn to Slide No. 25.

18 What does this photograph depict?

19 A. This photograph depicts what looks like a young girl and a
20 man's knees who has ejaculated onto into the young girl.

21 Q. And what, if any, markings are on the man's knees?

22 A. In this image, you can appreciate relatively permanent skin
23 markings or moles on both knees.

24 Q. Let's turn to Slide No. 26.

25 What do the red boxes represent?

1 A. The red boxes, again, are areas I enlarged for further
2 examination.

3 Q. Slide No. 27, Doctor.

4 What have you done here?

5 A. In Slide No. 27, in a similar way, I have identified the
6 moles with black circles on both the left and right thigh or
7 knee. And on the left thigh I also identified varicose veins or
8 superficial close-to-the-skin veins with red curved lines, and
9 these will be shown again in enlarged images.

10 Q. Why would you highlight varicose veins, Doctor?

11 A. Varicose veins are also easy to identify as veins and
12 they're also relatively permanent over the period of several
13 years.

14 Q. Let's turn to Slide No. 28, Doctor.

15 What is depicted in this slide?

16 A. This is a close-up of the area of the left leg from the
17 previous photograph.

18 Q. Is this one of the seized photographs?

19 A. Exactly. From the defendant's computer.

20 Q. Now, can you see the moles and the varicose veins that you
21 described in this photograph?

22 A. I can.

23 Q. Let's turn -- did you mark them on another slide?

24 A. I do. On the next slide.

25 Q. Turning to Slide No. 29, what do we see here?

1 A. Here I have identified the most prominent moles on the left
2 leg with black circles and the specific pattern of the vein or
3 veins here with red curved lines.

4 Q. How many moles do you see in that photograph, Doctor?

5 A. There are six moles identified.

6 Q. Do they form any types of appearance?

7 A. In the lower half of the photograph, which would be further
8 up the thigh, as you're looking at it, you can see the three
9 arranged in a linear fashion. And the three in the further part
10 of the leg or the upper part of this photograph, you can see
11 they're in more of an arched shape and they all surround this
12 group of veins.

13 Q. Let's turn to Photograph -- Slide No. 30, Doctor.

14 What does this slide depict?

15 A. This is a photograph of the defendant taken by me on
16 January 31st in which I had him pose in a similar position to
17 other photographs.

18 Q. And the -- did you take any close-ups of either the left or
19 the right thigh of the defendant?

20 A. I did. From this positioning in the next slide you'll see
21 I took closer photographs of both the left and the right thigh
22 individually.

23 Q. Let's turn to 31 then.

24 What is this a close-up of?

25 A. This is an image of the left thigh.

1 Q. And 32?

2 A. This red square depicts an area that I enlarged for further
3 examination.

4 Q. What is 33, Doctor?

5 A. 33 is the area within the red square from the prior
6 photograph. And to remind you, these are from the images I took
7 of the subject on January 31st.

8 Q. Okay.

9 Doctor, do you see moles or varicose veins in this
10 photograph?

11 A. I do.

12 Q. Did you identify them later?

13 A. I did. In the next slide they're identified in a similar
14 fashion.

15 Q. Turn to Slide No. 34. What are in the circles, Doctor, the
16 black circles?

17 A. Here the moles are identified with black circles and the
18 veins are again identified with red curved lines.

19 Q. If you would look at the bottom two circles, going from the
20 left to the right, there are some red markings about 45 degrees
21 up.

22 Do you see those?

23 A. I see those.

24 Q. Why didn't you use those, doctor?

25 A. Those again represent inflammation or what we call crusting

1 which is usually a picked-at hair follicle, something that is
2 temporary, would go away within days or weeks.

3 Q. Doctor, are there other markings in here that are not as
4 prominent or dark as the ones you circled?

5 A. There are. I only identified the easily identifiable
6 moles.

7 Q. Why did you pick those?

8 A. I felt they were the most reliable. And when I examined
9 Mr. Pepe, they were the obvious moles.

10 Q. Let's turn to Slide No. 35.

11 What does this slide depict?

12 A. This slide depicts -- on the left is the close-up
13 previously seen of the image taken from the defendant's computer
14 with moles identified and veins identified.

15 On the right is an image I took of Mr. Pepe on
16 January 31st of the same region on the left thigh with moles
17 identified with black circles, veins with red lines.

18 Q. Let's turn to Slide No. 36, Doctor.

19 Dr. Craft, you just talked about the left thigh of the
20 person in this photograph. Did you do anything with the right
21 thigh?

22 A. I did. I also cropped an area from the right thigh which I
23 identified in the next slide with a red box.

24 Q. That's Slide No. 37 that we're seeing?

25 A. Yes.

1 Q. What did you do with the -- let me go to Slide No. 38 then.

2 What is Slide No. 38?

3 A. Slide 38 is the area from the prior slide within the red
4 box with contrast enhanced to identify the moles. And you can
5 see which I identified in the next slide with black circles.

6 Q. You have used this term a couple of times, doctor,
7 "contrast enhanced."

8 What do you mean?

9 A. Contrast enhancing an image we do all the time to highlight
10 different features of the image. Basically applies contrast to
11 the entire image so you can see darker things more easily.

12 Q. Did it help you identify moles and varicose veins?

13 A. It helped identify them for the purposes of a PowerPoint,
14 easier to see.

15 Q. Let's turn to Slide No. 39 then, Doctor.

16 What does Slide No. 39 show?

17 A. Slide 39 is the same image with the moles identified with
18 black circles.

19 Q. And how many moles do you identify in this image?

20 A. Here there are four.

21 Q. Where are they located?

22 A. There is one on the upper thigh or closer to the groin,
23 which is on the bottom of this photograph. There's a white box
24 behind it so you can see the entire circle. And there are three
25 on the lower thigh, closer to the knee, that form a bit of a

1 triangle.

2 Q. And these are from the photograph that we saw a few moments
3 ago?

4 A. They are.

5 Q. Seized from the defendant's computer media?

6 A. Yes.

7 Q. Let's take a look now at Slide No. 40.

8 What does this slide depict?

9 A. Slide No. 40 is from the defendant -- taken from the
10 defendant's right thigh on January 31st in a position that I
11 tried to approximate the bent knee in the prior photograph.

12 Q. Looking at Slide No. 41, what is inside the red box?

13 A. The red box is an area I cropped to enlarge for further
14 examination.

15 Q. Did you enlarge it?

16 A. I did on the next slide.

17 Q. Looking at Slide No. 42, what do we see here, Doctor?

18 A. This is the enlarged area from the prior side with the
19 moles identified with black circles again.

20 Q. And how many moles are there in this photograph?

21 A. Again, there are four. You can see in the proximal thigh
22 or the thigh closer to the groin, which is the lower part of
23 this photograph --

24 Q. That would be the lower left, Doctor?

25 A. The lower left, there is one prominent mole. And then on

1 the further from the groin, closer to the knee, there are three
2 moles that form a somewhat of a triangle. In the next slide I
3 have rotated it to more approximate the subject's position.

4 Q. And is Slide No. 43 that rotation?

5 A. It is.

6 Q. Turn to Slide No. 44.

7 What is the image on the left?

8 A. The image on the left is the image shown previously from
9 the image taken from the defendant's computer with moles
10 identified with black circles again, and on the right is the
11 close-up of the defendant's right thigh taken on January 31st
12 with the moles identified.

13 Q. I forgot to ask, Doctor, in the photograph on the right
14 there are some red markings down here near the bottom circle.

15 Can you tell what those are?

16 A. Again, these are inflammation or temporary skin changes,
17 usually an infected hair follicle.

18 Q. Let's turn to Slide 45.

19 Dr. Craft, what does Slide 45 depict?

20 A. Slide 45 is a middle-aged Caucasian man receiving oral
21 copulation from a young girl.

22 Q. Turn to Slide 46.

23 What have you done in this slide?

24 A. In this slide I have placed a red box to highlight an area
25 I cropped for further examination.

1 Q. Were you able to locate moles or markings in this box?

2 A. Yes, I was.

3 Q. Let's turn to Slide 47 then.

4 What does Slide 47 show?

5 A. Slide 47 uses black circles to identify the easily
6 identifiable moles on this man's right abdomen and right outer
7 thigh.

8 Q. So how many moles were you able to identify on the abdomen?

9 A. There is one prominent mole on the abdomen.

10 Q. How many on the right upper thigh?

11 A. Three prominent moles on the right upper thigh.

12 Q. Do they form a pattern of any sort?

13 A. They form a triangular shape.

14 Q. Turning to Slide No. 48, what have you done in this
15 photograph?

16 A. Slide 48 is the area from the prior slide within the red
17 box that has been contrast enhanced to show the dark skin
18 lesions.

19 Q. And Slide 49, what have you done here?

20 A. Here I have identified the same moles with black circles.

21 Q. Again, how many moles are on the abdomen?

22 A. There is one mole on the abdomen and three on the right
23 thigh that form a triangular shape on the thigh.

24 Q. Let's now look at Slide No. 50.

25 Dr. Craft, what does this slide depict?

1 A. This slide depicts a middle-aged Caucasian man receiving
2 oral copulation from a young girl.

3 Q. Did you see any identifiable marks in this photograph?

4 A. I did.

5 Q. Turn to Slide no 51.

6 What is in the red box?

7 A. Slide 51 shows a red box identifying an area cropped for
8 further enlargement and examination.

9 Q. Let's turn to Slide 52 then.

10 A. In slide 52 I have identified the moles with black circles.
11 You can see there's one mole on the right abdomen and three on
12 the right thigh, again forming a triangular shape. And in the
13 next slide I have enlarged this area again.

14 Q. This is Slide No. 53?

15 A. This is.

16 Q. Did you do anything else to the photograph to help you
17 identify the moles better?

18 A. Here I have contrast enhanced it again to demonstrate the
19 dark skin lesions or moles, and I have identified them in the
20 next slide with black circles again.

21 Q. Let's turn to Slide 54 then.

22 What are the black circles?

23 A. The black circles are the moles identified. There is one
24 on the right abdomen and then there are three in a triangular
25 formation on the right thigh.

1 Q. Let's look at Slide 55, Doctor.

2 What is this a slide of?

3 A. Slide 55 is an image I took of Mr. Pepe on January 31st
4 lying on the floor in a similar position.

5 Q. What is visible in this photograph?

6 A. On this photograph there are moles that are identifiable as
7 well.

8 Q. Let's start with Slide 56.

9 Is this the -- what does this box represent?

10 A. Slide 56 has a red square identifying an area that I
11 cropped for enlargement in the next slide.

12 Q. Slide 57?

13 A. 57, the area is enlarged and the contrast is slightly
14 enhanced.

15 Q. And with the contrast enhanced, were you able to identify
16 moles?

17 A. I was.

18 Q. Turning to Slide No. 58, what do we see here?

19 A. Slide 58 I have used black circles to demonstrate the
20 moles. There is one on the -- on Mr. Pepe's right abdomen and
21 then there are three on the right thigh forming a triangular
22 pattern again.

23 Q. I notice in this picture, Doctor, there are some lighter
24 marks, one below the mole on the right and then a couple lighter
25 marks in the middle.

1 Why didn't you select those?

2 A. Again, I only chose moles that were what I felt were the
3 most reliable so the darkest, the most prominent moles.

4 Q. I am going to show you Slide No. 59, Doctor. There appear
5 to be three photographs in this slide, Doctor.

6 What is the photograph at the top?

7 A. The image at the top is the cropped area from Exhibit 1522
8 of the image taken from the defendant's computer.

9 Q. The middle photograph, Doctor, what does that represent?

10 A. It's a cropped area of Exhibit 1524, another image taken
11 from the defendant's computer.

12 Q. And the bottom photograph, what is that?

13 A. That's the cropped image from the picture I took of the
14 defendant on January 31st showing the right abdomen and thigh.

15 Q. And the circles, what are those, Doctor?

16 A. The circles again are the moles. There is one on the right
17 abdomen and three on the right thigh in each of the photographs.

18 Q. Let's turn to Photograph or Slide No. 60, Doctor. This is
19 Exhibit No. 1522 which you have described earlier.

20 What does the red box here represent?

21 A. Here the red box is an area I cropped for enlargement on
22 the left lower inner thigh.

23 Q. Turning to Slide No. 61, what is this?

24 A. This is that area that was identified with the red box in
25 the previous slide. The contrast has been enhanced again and

1 you can see centrally the two easily identifiable moles.

2 Q. And on Slide No. 62, what have you done?

3 A. I have identified those moles with black circles.

4 Q. Let's turn to Slide No. 63, Doctor. Is Slide No. 63,
5 Doctor, what are you -- what is in the red box?

6 A. The red box identifies an area that I cropped for further
7 enlargement.

8 Q. And Slide No. 64?

9 A. Slide No. 64 is the area from the previous slide within the
10 red box that's been enlarged and the contrast has been enhanced.

11 Q. From this photograph that's been contrast enhanced, are you
12 able to see whether there are any moles?

13 A. You can see the two easily identifiable moles in the center
14 of the picture. And in the next slide I identified them again
15 with black circles.

16 Q. Slide 65 is up on the screen, Doctor.

17 Are these the circles you were just talking about?

18 A. These are the circles I placed over the moles.

19 Q. Let's turn to Slide No. 66 now, Doctor.

20 Slide No. 66, what is in the box in the upper right
21 corner?

22 A. Slide No. 66, there is a red box identifying an area I
23 cropped for further enlargement on the left lower inner thigh.

24 Q. And what is this photo of?

25 A. Again, this is a photograph of Mr. Pepe I took on

1 January 31st when he is lying on the floor.

2 Q. Turning to Slide No. 67.

3 What is this?

4 A. This is the enlarged area from within the red square from
5 the previous photograph of the contrast enhanced.

6 Q. And from the contrast-enhanced photograph on Slide 67, are
7 you able to identify the marks or moles?

8 A. Yes. You can identify two moles on the left lower inner
9 thigh which in the next slide I identified with black circles
10 again.

11 Q. And the black circles in Slide 68, is that what you -- the
12 moles you just described?

13 A. These are the moles I identified with black circles, yes.

14 Q. Doctor, I am going to put up Slide No. 69. Let's start
15 with the photograph on the left, Exhibit No. 1522.

16 What is that?

17 A. The image further to the left is the cropped area of the
18 left lower inner thigh taken from the defendant's computer.

19 Q. And Exhibit No. 1524 in the middle, what is that?

20 A. This is the left lower inner thigh of the image -- another
21 image taken from the defendant's computer.

22 Q. And the slide on the far right, Exhibit No. 2110, what is
23 that?

24 A. That's a cropped area of the defendant's left lower inner
25 thigh that I took on January 31st while he was lying down. And

1 in all three of these images, again I have circled the moles
2 with black circles.

3 Q. How many moles are on each of these images?

4 A. There are two identifiable moles in each of these images.

5 Q. Let's take a look at Slide No. 70.

6 Have we seen these pictures before?

7 A. Yes, I have.

8 Q. The picture on the -- the two pictures on the left, what is
9 that?

10 A. The two pictures on left --

11 MR. GUNN: Your Honor, I object to this exhibit. The
12 arrow I think is inappropriate.

13 THE COURT: Sustained.

14 MR. GUNN: Move to strike the exhibit from the screen.

15 THE COURT: Take it off the screen, thank you.

16 BY MR. LULEJIAN:

17 Q. Turning to the last exhibit, Doctor, Exhibit No. 71, what
18 does it depict? Let's start with the top box.

19 A. The top box represents two separate areas that were
20 examined. The left area of the box is the left thigh or left
21 knee.

22 MR. GUNN: Your Honor, I have an objection to this
23 exhibit. If we could remove it from the screen so I could be
24 heard? All right.

25 If I could consult with counsel.

1 THE COURT: Yes.

2 (Mr. Lulejian and Mr. Gunn confer off the record)

3 BY MR. LULEJIAN:

4 Q. All right, Dr. Craft, let's move away from your slide show.

5 A. Okay.

6 Q. Dr. Craft, I am going to show you what has been admitted in
7 evidence as Defense Exhibit No. 302.

8 MR. GUNN: Actually, I don't think 302 has been
9 admitted. It's been identified. That's my recollection.

10 THE COURT: I don't know. Do you want to submit it?

11 MR. LULEJIAN: One second, Your Honor.

12 THE COURT: 302 is not admitted yet.

13 BY MR. LULEJIAN:

14 Q. Dr. Craft, do you have Defense Exhibit 302 in front of you?

15 A. Yes, I do.

16 Q. Would you please take a look at that and tell me what it
17 depicts?

18 Actually, have you seen this photograph before,
19 Doctor?

20 A. Yes, I have.

21 Q. Are there any distinguishing marks visible in this
22 photograph?

23 A. There is one mole identifiable on the right thigh. And
24 there is a hazy tan patch on the left inner thigh.

25 Q. And based on your training and experience as a

1 dermatologist, what is that hazy tan patch?

2 A. The hazy tan patch again represents post-inflammatory
3 hyperpigmentation, which is the skin discoloration you see after
4 you have infected hair follicles which, if you look closely, he
5 also has infected hair follicles below the scrotum there.

6 MR. LULEJIAN: No further questions, Your Honor.

7 THE COURT: Mr. Gunn?

8 CROSS-EXAMINATION

9 BY MR. GUNN:

10 Q. Good morning, Dr. Craft.

11 A. Good morning, Mr. Gunn.

12 Q. You testified about your education and you're a doctor;
13 correct?

14 A. That's correct.

15 Q. Dermatologist?

16 A. I'm a dermatologist.

17 Q. You have been a practicing doctor for less than ten years;
18 right?

19 A. That's correct.

20 Q. Up until 2005, in fact, you were just a resident or fellow
21 who was supervised by more experienced doctors; correct?

22 A. That's correct.

23 Q. And am I also correct that you have never testified as an
24 expert before this Court proceeding?

25 A. That's correct.

1 Q. You have testified about moles on certain areas of two
2 bodies; right? One from some -- well, actually you have
3 testified about two -- two sets of -- two sets of photographs;
4 right?

5 A. Yes.

6 Q. The first one was a man who appeared to be Mr. Pepe
7 standing with a young girl naked?

8 A. Yes.

9 Q. And then you compared that to some photographs you took of
10 Mr. Pepe standing; right?

11 A. Yes.

12 Q. The second set of photographs was a set of photographs of a
13 man having oral sex from a young girl; correct?

14 A. Yes.

15 Q. And then the other set -- in that set was a set of
16 photographs you took of Mr. Pepe; correct?

17 A. Correct.

18 Q. And then you blew up selected areas in these sets of
19 photographs and you testified about those areas just now;
20 correct?

21 A. That's correct.

22 Q. I want to focus on the second set of two sets, if that
23 makes sense to you. The one with the set of the photographs
24 with the man having oral sex from a girl.

25 A. Uh-huh.

1 Q. And a set with Mr. Pepe.

2 MR. LULEJIAN: Your Honor, perhaps defendants could
3 refer to the exhibit numbers to keep it clean.

4 THE COURT: Keep it clean?

5 MR. LULEJIAN: I am sorry. To keep it straight.

6 MR. GUNN: The PowerPoint slides does Counsel mean,
7 Your Honor?

8 THE COURT: I don't know. Whatever you want to do is
9 fine.

10 BY MR. GUNN:

11 Q. In the photographs -- in the two sets of photographs -- you
12 understand what I am saying about the second set of two sets
13 versus the first set of two sets?

14 A. Not exactly. You better tell me which set you want me to
15 talk about.

16 Q. All right.

17 Let's refer to your PowerPoint slides, if I can get
18 mine.

19 A. That would be easier.

20 Q. Actually probably a simple way to do it is PowerPoint
21 Slide -- the last PowerPoint slide, 71, do you have a hard copy
22 of that in front of you?

23 A. Slide 71?

24 Q. Yes.

25 A. Yes, I do.

1 Q. That basically shows the areas -- it has selected
2 photographs from both an individual and Government Exhibit 1531,
3 portions of his skin and portions of skin from photographs you
4 took of Mr. Pepe from Government Exhibit 2108; correct?

5 A. That's correct.

6 Q. As well as other Government exhibits; right?

7 A. Yes.

8 Q. And those are the areas of skin surface that you selected
9 to try to identify moles on the two different sets of
10 photographs; correct?

11 A. That's correct.

12 Q. And your estimate of the total skin surface -- well, let me
13 step back.

14 You selected those areas to examine more closely;
15 right?

16 A. Yes.

17 Q. And you looked for moles in those areas; correct?

18 A. I did.

19 Q. Now, you didn't look at other areas and blow those up?

20 A. I examined his whole body but didn't blow up any other
21 areas, that's correct.

22 Q. And that includes you didn't blow up any other areas of the
23 photographs of the man having oral sex either; right?

24 A. I looked at areas where the images were high enough quality
25 to identify moles.

1 Q. And you basically selected these areas; correct?

2 A. That's correct.

3 Q. And those areas constitute probably less than five percent
4 of the body area or skin surface of, in one instance, Mr. Pepe,
5 and in the other instance this person having oral sex with a
6 minor?

7 A. That's correct. It's approximately five percent.

8 Q. And now some people have very few moles and some people
9 have a lot of moles; right?

10 A. That's true.

11 Q. Some people can have as much as a hundred moles?

12 A. Yes.

13 Q. Some people can have several hundred moles?

14 A. That's true.

15 Q. There's reason to believe that Mr. Pepe is on the high end
16 of that spectrum, isn't there?

17 A. What's your reason to believe that?

18 Q. Well, he had 16 moles in less than five percent or about
19 five percent of his skin surface; correct?

20 A. That's correct. But because moles are randomly
21 distributed, you can't extrapolate that to the rest of the body.

22 Q. Well, actually if, in fact, moles were randomly
23 distributed, you could extrapolate and get a rough idea that if
24 1-20th of the body had 16 moles, the whole body would probably
25 have in the area of 300 or so, 320; right?

1 A. I think that's an incorrect assumption because if they are
2 randomly distributed, you shouldn't be able to assume anything
3 else about the rest of the body.

4 Q. Well, statistically over the whole body -- if a person --
5 if moles are randomly distributed and a person had only 16
6 moles, how often would those 16 moles be in just five percent of
7 the body surface?

8 A. It would be infrequent to have none on the rest of the
9 body.

10 Q. And, in fact, if they were randomly distributed, you would
11 tend to see them sort of about the same proportion all over the
12 body roughly; right?

13 A. You would have to make the assumption, which I think is
14 incorrect, that five percent you're looking at is representative
15 of every area of the body, but I think that's an incorrect
16 assumption.

17 Q. So Mr. Pepe could have more than 320 moles?

18 A. He could have as many moles as he has. I don't think you
19 can extrapolate from looking at one area of the body how many he
20 would have on the rest of his body.

21 Q. You have no idea how many moles he has?

22 A. I do because I have examined him, but I didn't count them
23 all up.

24 Q. You have no idea how many moles the person in -- having
25 oral sex with the minor has?

1 A. I do not.

2 Q. With respect to the random distribution of moles over the
3 body, there actually aren't any studies of that, are there?

4 A. The distribution of moles has been studied.

5 Q. But there's no studies that shows they are randomly
6 distributed over the body, are there?

7 A. There are studies describing the frequency on body
8 locations.

9 Q. But there's no studies that show that they are randomly
10 distributed on the body; right?

11 A. If you mean randomly distributed pattern-wise, it's
12 commonly accepted medical knowledge that moles are randomly
13 distributed.

14 Q. It actually doesn't really matter for medical treatment and
15 knowledge whether moles are randomly distributed; right?

16 A. It doesn't.

17 Q. As a dermatologist, all you're concerned of is --
18 generally, is whether there is a mole, what kind of mole it is
19 and whether it's changing; correct?

20 A. Well, that's not quite correct because certain pigmented
21 lesions do come in patterns, and so if a particular pattern of
22 pigmented spots or brown spots shows up, then it would represent
23 something else. But we do think of them being randomly
24 distributed because there is no pattern to them.

25 Q. But no one has ever actually studied the issue of whether

1 there are patterns; right?

2 A. It's common medical knowledge.

3 Q. It's common medical assumption; correct?

4 A. It's in textbooks and that's what we teach medical
5 students.

6 Q. Most of the time when dermatologists identify moles, they
7 look at the actual mole, don't they?

8 A. Can you repeat the question? Sorry.

9 Q. Most of the time when dermatologists identify moles, they
10 look at the actual mole, don't they?

11 A. We normally examine patients in person and look at the
12 actual moles.

13 Q. And they what is called palpate the mole, don't they?

14 A. Sometimes.

15 Q. That means they feel it; correct?

16 A. That's correct.

17 Q. Because sometimes moles are raised off the skin and
18 sometimes they're not raised; right?

19 A. That's true.

20 Q. And you can't palpate a mole in a photograph; right?

21 A. That's true.

22 Q. You testified that there is a field -- did you testify on
23 direct examination about teledermatology?

24 A. Teledermatology.

25 Q. That's where a doctor takes a photo of a skin lesion and

1 sends it to a dermatologist for a dermatologist to look at the
2 photo?

3 A. That's correct. That's what I said.

4 Q. The purpose of a teledermatology photograph is to identify
5 and diagnose what something on a single person is; correct?

6 A. That's correct.

7 Q. Like is it a mole?

8 A. Correct.

9 Q. Or what kind of mole is it?

10 A. That's correct.

11 Q. It's not -- strike that.

12 And even for that purpose, teledermatology is not
13 perfect; correct?

14 A. It's reliable and accurate.

15 Q. There have been studies about the error rate; right?

16 A. That's correct.

17 Q. And one study you cited in a report you prepared found
18 there was agreement between the teledermatology diagnosis and
19 the actual in-person diagnosis only 81 percent of the time,
20 didn't it?

21 A. That study that you're citing includes all kinds of skin
22 problems relating to skin cancer, but the accuracy was between
23 80 and 90 percent, that's correct.

24 Q. That's a study you cited in a report; correct?

25 A. That's correct.

1 Q. That study cites another study where the agreement was only
2 48 percent; isn't that true?

3 A. That's correct.

4 Q. And both the study you cited and the study that it cited
5 suggested a possible reason for that was the quality of the
6 photographs; correct?

7 A. Yeah, one thing you're not taking into account is that
8 within that study --

9 Q. Actually, that study, the one you cited in your report,
10 both it and the study it referred to with the 48 percent error
11 rate --

12 A. Actually -- do you mind if I refer to my notes so I can see
13 what study you are referring to?

14 Q. Please do. Do you want a copy of the article or do you
15 have a copy?

16 A. I have a copy. Which study are you referring to? Which
17 page?

18 Q. The study you cited in your report was *Store and Forward*
19 *Teledermatology and Skin Cancer Triage*, was it not?

20 A. I have that, yes.

21 Q. That's the one you cited in your report?

22 A. Exactly. And where is the other study cited within that?

23 Q. Well, first of all, on Page 42 of that study, it said
24 agreement between the teleconsultation diagnosis and the gold
25 standard -- meaning the in-person diagnosis -- was 81.81; right?

1 A. That's correct. It increases if you take subsets of that.

2 Q. And on the next page it refers to another study that
3 reported a 48 percent agreement? A 40 percent accuracy rate;
4 correct?

5 A. Where are you referring?

6 Q. Page 43.

7 A. Uh-huh. In the middle of the page?

8 Q. On the left-hand column.

9 A. Right.

10 Q. And this article suggests that it's the difference -- the
11 different accuracy rate is because of poorer images; correct?

12 A. Exactly. It's up to the dermatologist to decide if the
13 image are of sufficient quality.

14 Q. And the study itself that had the 48 percent error rate
15 pointed out that there was a problem because you didn't have
16 medical people or dermatologists who were trained to take good
17 medical photographs; correct?

18 A. I haven't reviewed that exact study, so the . . .

19 MR. GUNN: Your Honor, could I have an exhibit marked?

20 THE COURT: Sure.

21 MR. GUNN: If we could mark this as 281, Your Honor.

22 With the Court's permission, I will put the exhibit tag on it at
23 a recess.

24 THE COURT: Okay.

25 (Defendant's Exhibit 281 was marked)

1 BY MR. GUNN:

2 Q. First of all, is this the article that is cited in the
3 other article?

4 A. Yes, it is.

5 Q. And would you look at Page 212 of the second article, the
6 one that is cited in the article you cite. And would you look
7 at the last full paragraph in the right-hand column on that page
8 that begins with the words "Considering that the GP's"?

9 A. Yeah. I think I want time to review the whole article
10 before I comment on any of the science or discussion on it.

11 Q. The article does indicate though that it believes factors
12 were overcome in other studies by employing a medical
13 photographer to take the images, correct?

14 A. Again, I would like to read the whole article before I
15 comment on anything.

16 Q. Well, could you read that paragraph and just tell us if the
17 article says that?

18 THE COURT: I don't think that's appropriate.

19 BY MR. GUNN:

20 Q. The photographs of Mr. Pepe that you looked at were taken
21 by a medical photographer -- at least in a sense -- namely you;
22 right?

23 A. That's correct.

24 Q. You have no information that the other photographs of the
25 man having oral sex were taken by a medical photographer;

1 correct?

2 A. I have my clinical judgment, which is they were good
3 quality photographs.

4 Q. That wasn't my question, Dr. Craft.

5 I move to strike, Your Honor, as non-responsive.

6 THE COURT: All right. I will strike the answer.

7 BY MR. GUNN:

8 Q. You have no information that the photographs in -- the man
9 having oral sex photographs that you looked at were taken by a
10 medical photographer; correct?

11 A. The exact question you want to know is were they taken by a
12 medical photographer?

13 Q. You don't have any indication or information that they
14 were; correct?

15 A. I don't have that indication.

16 Q. In fact, they appear to be taken by a man in the midst of
17 sexual activity, don't they?

18 A. They appear to be.

19 Q. And teledermatology is actually not used at some major
20 hospitals in Los Angeles; correct?

21 A. It's used at our hospital.

22 Q. It's not used at UCLA Medical Center in West L.A.; correct?

23 A. People refer teledermatology cases to each other digitally
24 all the time at UCLA.

25 Q. It's not used at USC Medical Center, is it?

1 A. I am not familiar with USC, but there is an expert in
2 teledermatology who is the associate director there who has done
3 many studies on teledermatology at USC.

4 Q. It was abandoned at the Children's Hospital in Boston,
5 wasn't it?

6 A. I'm not sure about that.

7 MR. GUNN: No further questions, Your Honor.

8 THE COURT: Redirect?

9 MR. LULEJIAN: Yes, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. LULEJIAN:

12 Q. Doctor, a few minutes ago during cross-examination you were
13 asked some questions about quality of photographs. And at one
14 point you were going to state something about that -- Mr. Gunn
15 had asked you a question about the survey or the article. And
16 you had remarked that it had something to do dependent on the
17 quality of the photograph, but you weren't allowed to complete
18 that answer.

19 What were you trying to say?

20 A. Exactly. When we receive teledermatology consultations or
21 when a physician sends an image to us and asks us for our
22 opinion, the essential quality that we need to address is the
23 image quality, and that's the personal decision of the
24 physician. It doesn't matter the pixels or not. It's your
25 personal decision. And that's discussed at length, both in this

1 study and elsewhere. Even within this study they have a
2 hierarchy of whether the image was excellent, sufficient or
3 insufficient. And that's up to the dermatologist who makes that
4 decision whether it's sufficient quality.

5 Q. Doctor, I am showing you what has been marked as
6 Government -- admitted as Government Exhibit No. 1522.

7 Can you see that on the screen?

8 A. Yes, I can. Yes, I can.

9 Q. How would you describe the quality of that photograph for
10 purposes of an analysis by a dermatologist?

11 A. This photograph has high enough resolution that you can
12 pick out easy-to-identify pigmented spots or moles. You can see
13 one on the girl's neck. You can see several in the foreground
14 that I described. And on the left thigh you can also see them
15 if you enlarge the image, which we have that ability on a
16 computer. Some areas are out of focus which we don't analyze.

17 Q. I can -- I have the ability to enlarge the image. Is there
18 a portion you would like me to enlarge, Doctor, to illustrate
19 your point?

20 A. Yes. As I have done in my PowerPoint presentation, if you
21 enlarge the right thigh, for example, you can you see right
22 there under the cursor is the triangle of moles that I described
23 in my PowerPoint presentation.

24 Q. Right here?

25 A. Exactly. So by being able to enlarge it, that means the

1 resolution is good.

2 Q. Let's take a look at Exhibit No. 1524, Doctor.

3 How would you rate that photograph for purposes of
4 your review as a dermatologist?

5 A. Again, the quality is sufficient to diagnose the moles in
6 the foreground and on the right inner thigh -- left inner thigh,
7 excuse me.

8 Q. In fact, I am going to enlarge the right-hand portion
9 again.

10 Is this sufficient -- is the enhancement or
11 magnification three or four times sufficient for your purpose
12 as a dermatologist?

13 A. Yes.

14 Q. Let's take a look at Government Exhibit No. 1531.

15 How would you rate the quality of that photograph for
16 purposes of your analysis as a dermatologist?

17 A. This is very good quality.

18 Q. Why do you say it's very good quality?

19 A. The resolution appears to be high and almost all of the
20 image is in focus. Good lighting.

21 Q. Why is it important that the entire image be in focus?

22 A. The more area that is in focus, the more area of skin you
23 can evaluate.

24 Q. Is this photograph a good candidate for magnification?

25 A. It is.

1 Q. Is there a portion of this photograph you would like me to
2 magnify?

3 A. If you enlarge the left knee or left thigh of the man, you
4 can see the moles I identified previously. You can also see the
5 varicose vein centrally.

6 Q. Right here, Doctor, are the moles?

7 A. Those are the three moles in a line and the varicose vein.
8 You can see a nice resolution.

9 Q. The varicose vein being right here in the center?

10 A. That's correct.

11 Q. And the moles being in the top.

12 Doctor, this field of teledermatology, the pictures
13 you are submitted -- the picture that is submitted to you to
14 analyze, who usually takes that picture?

15 A. That picture is usually taken by a non-dermatologist
16 physician or nurse.

17 Q. And what does the quality of those photographs range from?

18 A. Some people send them from cell phones asking for advice
19 and some people have eight or ten-megapixel cameras. It's a
20 very wide range.

21 Q. Those photographs here, would those be sufficient for you
22 to do an evaluation?

23 A. Of the lesions that I'm looking at, yes.

24 Q. Doctor, are you trying to determine exactly what type of
25 mole or lesion is on those photographs?

1 A. No. There's dozens of sub-types of moles. I'm just trying
2 to identify them as common moles or relatively permanent
3 pigmented skin markings.

4 MR. LULEJIAN: One moment, please, Your Honor.

5 I have no further questions, Your Honor.

6 THE COURT: Thank you. Recross?

7 MR. GUNN: Nothing, Your Honor.

8 THE COURT: Thank you, sir, you are excused.

9 Does the Government have another witness?

10 MS. DONAHUE: Your Honor, we have some stipulations to
11 read and then a deposition to play which will take a moment to
12 set up.

13 THE COURT: All right. Ladies and gentlemen, counsel
14 is going to read some stipulations. As I previously indicated,
15 these are things you must accept as true.

16 MS. DONAHUE: The first stipulation states,
17 "Stipulation regarding testimony of Maureen O'Hara."

18 And the stipulation reads:

19 "Plaintiff United States of America, by and through
20 its counsel of record, the United States Attorney for the
21 Central District of California, and defendant, Michael Joseph
22 Pepe, individually and through his counsel of record, hereby
23 stipulate that if Maureen O'Hara were called to testify as a
24 witness at trial in this case she would testify to the following
25 facts:

1 "One, defendant Michael Joseph Pepe is her brother.

2 "Two, Elaine Pepe Williams is her sister, and Richard
3 Williams is the husband of Elaine Pepe Williams.

4 "Three, between June 2006 and February 2007, Elaine
5 Pepe Williams gave Maureen O'Hara the handwritten letter
6 identified as Government Exhibit No. 2007.

7 "Four, Maureen O'Hara recognizes the handwriting of
8 the author of Government Exhibit 2007 as that of her brother,
9 defendant Michael Joseph Pepe. Maureen O'Hara's recognition of
10 the handwriting is based on her written correspondence with her
11 brother for the past 30 years.

12 "And, five, defendant Michael Joseph Pepe's last
13 address in the United States was in Ventura County, California."

14 At this time the Government would move to admit
15 Government's Exhibit No. 2007, which is the letter referred to
16 in that stipulation.

17 THE COURT: Any objection?

18 MR. BROWN: No objection, Your Honor.

19 THE COURT: All right. That is admitted. Thank you.

20 (Government's Exhibit 2007 was received)

21 MS. DONAHUE: Your Honor it's a number of pages.
22 Would it be all right if I published portions of it to the jury
23 at this point?

24 THE COURT: Sure.

25 MS. DONAHUE: Page 1 begins, "Dear Richard and

1 Elaine."

2 The reference -- as I said, it's a lengthy letter. I
3 am referring to Page 12. States, "I will try to cut this short
4 and not be too graphic but there may be some things that you
5 need to understand" --

6 MR. BROWN: Your Honor, we would object to reading of
7 portions of the letter.

8 THE COURT: The letter is in evidence. You can refer
9 to it in closing, if you like.

10 MS. DONAHUE: And then the second stipulation just
11 states stipulation regarding children's names, and that reads:

12 "Plaintiff, United States of America, by and through
13 its counsel of record, the United States Attorney for the
14 Central District of California, and defendant Michael Pepe,
15 through his counsel of record, Deputy Federal Public Defenders
16 Charles Brown and Carlton Gunn, hereby stipulate to the
17 following:

18 "In the seven counts in the First Superseding
19 Indictment, each child witness is referred to by initials.
20 Those initials correspond to each child as set forth below:

21 "Count One, I.T. is I.T..

22 "Count Two, L.K. is L.K.xxx.

23 "Count Three, S.R. is S.R.xxx.

24 "Count Four, S.S. is S.S.xxx.

25 "Count Five, K.S. is K.S.x.

1 "Count Six, N.T.D. is NTDx.

2 "And Count Seven, T.C. is T.C.xx."

3 And the next one states:

4 "Stipulation regarding accuracy of Government Exhibit
5 No. 1242.

6 "Plaintiff, United States of America, by and through
7 its counsel of record, the United States Attorney for the
8 Central District of California, and defendant Michael Pepe,
9 through his counsel of record, Deputy Federal Public Defender
10 Charles Brown and Deputy Federal Public Defender Carlton Gunn,
11 hereby stipulate to the following:

12 "Government Exhibit 1242 is an accurate and correct
13 translation of Government Exhibit No. 1241, the family book for
14 SS and SR."

15 And with that, the Government moves Exhibit No. 1242,
16 the translation, into evidence.

17 THE COURT: Any objection?

18 MR. BROWN: No objection.

19 THE COURT: Admitted. Thank you.

20 (Government's Exhibit 1242 was received)

21 MS. DONAHUE: "Stipulation regarding defendant's
22 travel from the United States of America to the Kingdom of
23 Cambodia.

24 "Plaintiff, United States of America, by and through
25 its counsel of record, the United States Attorney for the

1 Central District of California, and defendant Michael Pepe,
2 through his counsel of record, Deputy Federal Public Defender
3 Charles C. Brown and Deputy Federal Public Defender Carlton F.
4 Gunn, hereby stipulate to the following:

5 "One, on or about September 1, 2005, defendant,
6 Michael Joseph Pepe, traveled from Los Angeles International
7 Airport, Los Angeles, California to Manila, Philippines on
8 Philippine Airlines Flight PR103.

9 "Two, on or about September 3rd, 2005, defendant,
10 Michael Joseph Pepe, traveled from Manila, Philippines to
11 Bangkok, Thailand on Philippine Airline Flight No. PR730.

12 "And, three, on or about September 3rd, 2005,
13 defendant, Michael Joseph Pepe, traveled from Bangkok, Thailand
14 to Phnom Penh, Cambodia on Bangkok Air Flight No. PG926."

15 Finally, the last stipulation. It says:

16 "Stipulation regarding defendant's citizenship.

17 "Plaintiff, United States of America, by and through
18 its counsel of record, the United States Attorney for the
19 Central District of California, and defendant Michael Pepe,
20 through his counsel of record, Deputy Federal Public Defender
21 Charles C. Brown and Deputy Federal Public Defender Carlton
22 Gunn, hereby stipulate that defendant Michael Joseph Pepe was
23 born on [REDACTED] 1953 in Suffolk County, Massachusetts, and
24 by virtue of his birth was and is a citizen of the United States
25 of America. Defendant has not renounced his citizenship."

1 Your Honor, those are all of the stipulations.

2 We have a deposition to play and some exhibits to show
3 during the deposition. It might take a couple of minutes to set
4 it up.

5 THE COURT: Okay. Do you have a time estimate of how
6 long it takes to --

7 MS. DONAHUE: The depositions runs for a little bit
8 over three hours.

9 THE COURT: Okay. So we will start it and finish it
10 tomorrow.

11 MS. DONAHUE: Yes.

12 THE COURT: Okay. Go ahead and set it up.

13 MS. DONAHUE: Your Honor, for the record, this is a
14 deposition of Basang, B-A-S-A-N-G, that was taken on
15 February 29th of this year, 2008 in Phnom Penh, Cambodia.

16 THE COURT: All right.

17 (Whereupon, the video was played for the jury)

18 THE COURT: Ladies and gentlemen, are you able to hear
19 that? The reason I'm asking is that -- one of the many reasons
20 is our court reporter is not going to be transcribing this and
21 so we need to make sure that you are able to hear it. She won't
22 be able to read it back to you.

23 Where is the speaker?

24 MR. LULEJIAN: The speaker is in the front.

25 THE COURT: Just in the computer?

1 MR. LULEJIAN: Yes, Your Honor.

2 THE COURT: Do we need to take a break?

3 MS. DONAHUE: I am afraid we do. We played it and it
4 was perfect.

5 THE COURT: It's always perfect until the jury comes
6 into the room. That's the rule.

7 All right. Ladies and gentlemen, we will take a 15
8 minute break. Don't talk about the case or form or express any
9 opinions about the case.

10 (Recess taken)

11 (Jury In)

12 THE COURT: All right. Everybody cross your fingers.
13 You may proceed.

14 MS. DONAHUE: Thank you, Your Honor.

15 (Whereupon, the video was played for the jury)

16 THE COURT: Mr. Lulejian, you are showing 1002 to the
17 jurors.

18 MR. LULEJIAN: Yes, Your Honor, this is Government
19 Exhibit 1002.

20 THE COURT: Thank you.

21 (Photograph published for the jury)

22 (Whereupon, the video was played for the jury)

23 MR. LULEJIAN: Your Honor, for the record, I am
24 putting Government Exhibit No. 1030 on the overhead.

25 THE COURT: Thank you.

(Photograph published for the jury)

(Whereupon, the video was played for the jury)

MR. LULEJIAN: Your Honor, the Government will publish Exhibit No. 1031.

THE COURT: All right.

(Photograph published for the jury)

(Whereupon, the video was played for the jury)

MR. LULEJIAN: The Government will publish Exhibit No. 1032.

THE COURT: Thank you.

(Photograph published for the jury)

(Whereupon, the video was played for the jury)

MR. LULEJIAN: Your Honor, the Government will first publish Exhibit 1003.

THE COURT: Okay.

(Photograph published for the jury)

MR. LULEJIAN: The Government will now publish Exhibit 1004.

THE COURT: Thank you.

(Photograph published for the jury)

(Whereupon, the video was played for the jury)

MR. LULEJIAN: The Government will publish 1033 on the overhead, Your Honor.

THE COURT: Thank you.

(Photograph published for the jury)

(Whereupon, the video was played for the jury)

MR. LULEJIAN: Your Honor, the Government will publish Exhibits 1034 and 1035.

THE COURT: Thank you.

MR. LULEJIAN: This is Exhibit 1034, Your Honor.

(Photograph published for the jury)

MR. LULEJIAN: This is Exhibit 1035.

(Photograph published for the jury)

THE COURT: Thank you.

(Whereupon, the video was played for the jury)

MR. LULEJIAN: Your Honor, the Government will publish 1036 and 1037.

THE COURT: You may.

MR. LULEJIAN: Your Honor, this is Government 10 -- Exhibit No. 1036.

(Photograph published for the jury)

MR. LULEJIAN: This, Your Honor, is Government Exhibit No. 1037.

THE COURT: Thank you.

(Photograph published for the jury)

(Whereupon, the video was played for the jury)

MR. LULEJIAN: Your Honor, may we publish 1018?

THE COURT: Yes.

(Photograph published for the jury)

THE COURT: Thank you.

(Whereupon, the video was played for the jury)

MR. LULEJIAN: May we publish 1019, Your Honor.

THE COURT: Yes.

(Photograph published for the jury)

(Whereupon, the video was played for the jury)

MR. LULEJIAN: May the Government publish 1017,

Your Honor.

THE COURT: Yes.

(Photograph published for the jury)

(Whereupon, the video was played for the jury)

MR. LULEJIAN: With the Court's permission, the

Government will publish 1008.

THE COURT: You may.

(Photograph published for the jury)

THE COURT: Thank you.

(Whereupon, the video was played for the jury)

MR. LULEJIAN: Your Honor, the Government would show

Exhibit No. 1002. It was misnamed on the tape.

THE COURT: You may.

MR. LULEJIAN: Showing 1002, Your Honor.

THE COURT: All right. Thank you.

(Photograph published for the jury)

(Whereupon, the video was played for the jury)

THE COURT: Is this a good time to break,

Mr. Lulejian?

1 MR. LULEJIAN: Yes, Your Honor, it is.

2 THE COURT: Ladies and gentlemen, don't talk about the
3 case or form or express any opinions about the case until it's
4 finally submitted to you. You are ordered to return tomorrow at
5 8:00 a.m. and you are ordered to have a good evening.

6 (Jury Out)

7 THE COURT: All right. Is this the last thing the
8 Government is doing, or do you have further witnesses tomorrow?

9 MS. DONAHUE: This is going to be our last witness,
10 Your Honor, so we will rest once this deposition is completed.

11 THE COURT: That's maybe another hour or so?

12 MS. DONAHUE: Maybe a little more than an hour.

13 THE COURT: And the Defense will then be prepared to
14 begin with its witnesses?

15 MR. GUNN: Yes, Your Honor.

16 THE COURT: And your estimate is?

17 MR. GUNN: We are still trying to figure out, Your
18 Honor. Without the depositions, we're thinking three to six
19 hours but we're not positive. That's without the depositions
20 and without Dr. Maloney and without our dermatologist, who I am
21 going to decide about calling tonight. So hopefully we will
22 have the depositions -- at least one of them, ideally both of
23 them, that may be a stretch -- to play on Thursday because, as I
24 was indicating to the Court earlier this morning. But I do want
25 to add the caveat but I don't -- I don't know if Mr. Brown has a

1 real good feel for how long it will be so. . .

2 THE COURT: Okay.

3 MS. DONAHUE: Your Honor, I should just note when we
4 were playing that depo, I received in court a marked-up copy of
5 the Kumlang depo for Defense counsel to review, based on the
6 Judge's order, so I will give that to them. And it looks like
7 there are two -- there may be two questions that the people who
8 were doing the mark-up had. We will confer with Defense counsel
9 and have those questions for you in the morning, but it sounds
10 like the Kumlang depo is close to completion.

11 THE COURT: Great.

12 MR. GUNN: I'm sorry. That's just the marking up of
13 it. Then, of course, it needs to be physically --

14 MS. DONAHUE: They have started physically.

15 MR. GUNN: Redacting?

16 MS. DONAHUE: Yes.

17 MR. GUNN: Oh.

18 THE COURT: Great. I need the jury instructions then
19 because we are going to be giving those relatively quickly.

20 MS. DONAHUE: Defense counsel has the set that
21 includes everything we're proposing, everything they're
22 proposing, our respective positions. I incorporated their
23 positions and ours all into one document. They have it.

24 I also have given them a proposed verdict form. The
25 Government is proposing a special verdict form because the Ninth

1 Circuit has upheld only the commercial prong of the definition
2 of illicit sexual conduct. It's our position we have clearly
3 commercial but we also have non-commercial, so we thought if the
4 jury found -- any counts as to which the jury found guilty, we
5 would ask them to specifically check the box for commercial.

6 THE COURT: They would have to be unanimous as to one
7 or the other anyway, right?

8 MS. DONAHUE: Yes. And if we have unanimous findings
9 on commercial, then regardless of what the Ninth Circuit does
10 down the road, there would not be an issue. We are concerned
11 without the special verdict form, should the Circuit down the
12 road say the non-commercial prong violates the commerce clause,
13 then a general verdict potentially could have an issue. So we
14 put together a special verdict form which I have given to the
15 Defense.

16 THE COURT: Okay. I understand your argument but it
17 may or may not be relevant.

18 MS. DONAHUE: Right.

19 THE COURT: If the jury must be unanimous on the type
20 anyway, then you need a special verdict anyway or I suppose you
21 don't need one. If the Defense were willing to agree that I
22 would just instruct them that they had to be unanimous.

23 MS. DONAHUE: Yes. So that's --

24 THE COURT: All right. Well, don't wait for the
25 Defense to do whatever it's going to do. I want the jury

1 instructions in whatever form you have them emailed to me --

2 MS. DONAHUE: I will do it as soon as I get back to my
3 office.

4 MR. GUNN: I will look at them right now, Your Honor.
5 I'm guessing I can look at them fairly quickly because if it
6 incorporates what I sent to them, and I can't tell them what to
7 say in their objections.

8 THE COURT: Great. All right. Anything else we need
9 to discuss before tomorrow?

10 MS. DONAHUE: No, Your Honor.

11 THE COURT: I haven't seen them obviously. I was
12 starting to look through yours. Do we have proposed instruction
13 on accomplice testimony and on convictions?

14 MS. DONAHUE: Accomplice is in there. Convictions may
15 not be.

16 MR. GUNN: I don't know if accomplice is in there,
17 Your Honor. I think it should be, as the Court has brought
18 something to my attention that I didn't think of. I was
19 handling the instructions.

20 THE COURT: You will be thinking about that this
21 evening then. All right. We will see you tomorrow at 7:45.

22 (Proceedings adjourned at 2:05 p.m.)
23
24
25

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE DALE S. FISCHER, JUDGE PRESIDING

United States of America,)
Plaintiff,)
vs.) Case No.
) CR 07-168 (A) -DSF
Michael Joseph Pepe,)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS

Day 8

Los Angeles, California

Wednesday, May 21, 2008

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19

20 VIETNAMESE CHANDARA HAC

21 INTERPRETER:
22

23 ALSO PRESENT: ATTACHE GARY PHILLIPS
24 ICE SPECIAL AGENT EDDY WANG
25

1 THE COURT: Okay.

2 MS. DONAHUE: We will get the deposition queued up,
3 Your Honor, from where we left off yesterday.

4 THE COURT: Okay. I looked at the jury instructions
5 last night and came up with a proposed set. There are tabs on
6 some of the ones where I either made notes or changes. I -- the
7 one that it stuck in there cross wise has to do with deposition
8 testimony so I don't know whether you wanted me to give that
9 one.

10 The verdict form that you sent me I haven't looked at
11 thoroughly. I see that you did tailor the specific findings to
12 the specific witness. The one you sent me doesn't have a
13 signature page. I assume you want the foreperson to sign it at
14 some point.

15 MS. DONAHUE: That would be nice. I apologize.
16 Signature page, Your Honor. Yeah. My mistake.

17 THE COURT: I didn't have a chance to thoroughly look
18 at the venue issue. I guess my question would be is the
19 Government concerned that it can't or hasn't established that
20 the last known address of the defendant in the United States --

21 MS. DONAHUE: No. We stipulated to it. We have
22 established -- there is venue both ways. There's one case in
23 the country that has addressed this. It's that District Court
24 in Texas. Who knows if the Ninth Circuit will address this.
25 And so it's really just an abundance of caution approach. We

1 have both -- we are happy to do either. Among people who fancy
2 themselves as experts in this area, there is a split of opinion
3 so we submitted both. But we're fine on both, especially if the
4 Court chooses one or another. I see the argument made -- the
5 logic followed by the District Court in Texas. But 2423(b),
6 which is the other travel statute, makes it a crime to travel in
7 interstate or foreign commerce with the intent to engage in
8 sexual acts with children. A number of those cases, the venue
9 provision cited is 18 U.S.C. 3237.

10 THE COURT: That's not -- my issue.

11 MS. DONAHUE: We have it both ways.

12 THE COURT: I know you have it both ways.

13 MS. DONAHUE: Okay.

14 THE COURT: My question is does the defendant contend
15 that venue isn't proper if the defendant merely traveled from,
16 through or into the central district?

17 MR. GUNN: Yes, Your Honor. We're -- our contention
18 is there has to be proof that his last known residence was in --

19 THE COURT: And do you contend that there's an
20 argument that his last known residence was not within the
21 central district?

22 MR. GUNN: Well, there's a stipulation to that effect.

23 THE COURT: I don't need to give a venue instruction
24 if the parties stipulate to venue.

25 MR. GUNN: I think the jury still has to find it, like

1 they do any stipulated fact.

2 THE COURT: I don't think that's right. I'm not sure.
3 But in any event, if there is a stipulation to venue, a
4 stipulation to that fact, why do you want to put in an element
5 that arguably doesn't work? That's my question.

6 MS. DONAHUE: That's a good point.

7 THE COURT: You can think about that. We're not there
8 yet. That's my question for you.

9 MS. DONAHUE: I see what you're saying, Your Honor. I
10 see what you're saying. Let me think about that a little bit.
11 You're right.

12 THE COURT: Okay.

13 MR. GUNN: There is one other sort of quasi discovery
14 issue which I was trying to work out with Mr. Lulejian. Maybe I
15 can approach him and see if we worked it out.

16 THE COURT: Okay. You have got about five minutes.

17 MR. GUNN: If not, then we will need Your Honor
18 briefly.

19 (Recess taken)

20 (Jury In)

21 THE COURT: Good morning. Everyone is present.
22 Are we ready to continue?

23 MS. DONAHUE: We are, Your Honor. We are going to
24 continue with the deposition of Basang from where we left off
25 yesterday.

1 THE COURT: All right. You may proceed.

2 (Whereupon, the video was played for the jury)

3 MR. LULEJIAN: With the Court's permission,
4 Your Honor, the Government would like to display Government
5 Exhibits No. 1039 and 1040.

6 THE COURT: You may.

7 (Photographs published for the jury)

8 MS. DONAHUE: This is Exhibit 1039. This is
9 Exhibit 1040.

10 THE COURT: Thank you.

11 (Whereupon, the video was played for the jury)

12 MR. LULEJIAN: Your Honor, with the Court's permission
13 we would like to publish 1041.

14 THE COURT: You may.

15 (Photograph published for the jury)

16 (Whereupon, the video was played for the jury)

17 MR. LULEJIAN: With the Court's permission, we would
18 like to publish 1042.

19 THE COURT: You may.

20 (Photograph published for the jury)

21 THE COURT: Thank you.

22 (Whereupon, the video was played for the jury)

23 MR. GUNN: May we have one moment, Your Honor. We may
24 have lost our place. If I could approach counsel?

25 THE COURT: Sure. All right. Continue.

(Whereupon, the video was played for the jury)

MR. LULEJIAN: Your Honor, the Government would seek permission to publish 1049.

THE COURT: You may.

(Photograph published for the jury)

(Whereupon, the video was played for the jury)

THE COURT: You may publish all of those, Mr. Lulejian.

MR. LULEJIAN: Thank you, Your Honor. This is 1052.

(Photograph published for the jury)

MR. LULEJIAN: Exhibit 1053.

(Photograph published for the jury)

MR. LULEJIAN: Exhibit 1054.

(Photograph published for the jury)

MR. LULEJIAN: Exhibit 1055.

(Photograph published for the jury)

MR. LULEJIAN: Exhibit 1056.

(Photograph published for the jury)

MR. LULEJIAN: And, Your Honor, 1057.

THE COURT: Thank you.

(Photograph published for the jury)

(Whereupon, the video was played for the jury)

MR. LULEJIAN: May the Government publish 1058, Your Honor?

THE COURT: Yes.

(Photograph published for the jury)

(Whereupon, the video was played for the jury)

MR. LULEJIAN: May the Government publish 2006,
Your Honor?

THE COURT: Yes.

(Photograph published for the jury)

THE COURT: Thank you.

(Whereupon, the video was played for the jury)

MR. BROWN: Your Honor, may I publish Defense
Exhibit 120?

THE COURT: You may.

(Photograph published for the jury)

THE COURT: Thank you. Does anyone know how much more
time we have in this segment?

AGENT WANG: No, Your Honor. It's a little longer.

MR. GUNN: It looks like about 30 pages in the
transcript.

THE COURT: Why don't we take a break now.

Ladies and gentlemen, don't talk about the case or
form or express any opinions about the case until it's finally
submitted to you. We will take our 15 minute break.

(Recess taken)

(Jury In)

THE COURT: All right. I think -- would you like to
show that exhibit again, Mr. Brown?

1 MR. BROWN: Yes, Your Honor.

2 (Photograph published for the jury)

3 THE COURT: All right. Thank you.

4 MR. BROWN: Thank you, Your Honor.

5 THE COURT: You may continue.

6 (Whereupon, the video was played for the jury)

7 MR. BROWN: Your Honor, may I publish Defense
8 Exhibit 121?

9 THE COURT: You may.

10 MR. BROWN: Thank you.

11 (Photograph published for the jury)

12 MR. BROWN: Thank you, Your Honor.

13 (Whereupon, the video was played for the jury)

14 MR. GUNN: May I have a moment to consult with
15 counsel, Your Honor?

16 THE COURT: You may.

17 (Mr. Gunn, Mr. Lulejian and Ms. Donahue confer off the record)

18 MR. GUNN: Your Honor, there were three lines that
19 were mistakenly redacted and Mr. Brown is going to read them
20 into the record and we have stipulated to that.

21 THE COURT: That's fine. Thank you.

22 MR. BROWN: Question by Mr. Brown to Ms. Sang:

23 "You also told the Court that you never bring children
24 to sell to Michael; right?

25 "Ms. Sank: Correct."

(Whereupon, the video was played for the jury)

MR. BROWN: Your Honor, just for the record we would ask for a limiting instruction with respect to this next portion of the testimony.

THE COURT: Do you want to show me what it is so I'm sure we are on the same --

MR. BROWN: Yes, Your Honor, may I approach?

THE COURT: Yes. For the witness's state of mind and not for the truth?

MR. BROWN: Yes, Your Honor. I think it's the line recorded towards the bottom.

THE COURT: Ladies and gentlemen, the witness is asked some questions about what someone said to her about who he was representing. This testimony is offered not for the truth of the matter; that is, not for who the man was actually representing, but for the impact it had on Ms. Sang's state of mind.

MR. BROWN: Thank you, Your Honor.

THE COURT: You may continue.

MR. BROWN: Thank you.

(Whereupon, the video was played for the jury)

MR. LULEJIAN: Your Honor, with the Court's permission I will now exhibit Exhibit 1058.

THE COURT: All right.

(Photograph published for the jury)

1 THE COURT: Thank you.

2 Is that the end of that testimony?

3 MS. DONAHUE: Yes, Your Honor.

4 THE COURT: Does the Government have any further
5 witnesses?

6 MS. DONAHUE: The Government has no further witnesses.

7 THE COURT: Does the Government rest?

8 MS. DONAHUE: We need to move -- officially move into
9 evidence the exhibits, the Government Exhibits that were shown
10 during the deposition, to which I believe there was no
11 objection.

12 THE COURT: Many of them are already in evidence.

13 MS. DONAHUE: Yes.

14 MR. BROWN: No objection, Your Honor.

15 THE COURT: All right. Those will all come in and you
16 will work with Steve or Paul and make sure that all those
17 mentioned are noted as being in evidence.

18 Anything further from the Government?

19 MS. DONAHUE: No. With that, Your Honor, the
20 Government rests.

21 THE COURT: Thank you.

22 MR. BROWN: Your Honor, the Defense would make a
23 Rule 29 motion for the record and would ask that the Defense
24 exhibits be received as well, 120 and 121, if they are not
25 already in.

1 THE COURT: Any objection to the Defense exhibits?

2 MS. DONAHUE: No, Your Honor.

3 THE COURT: Those are admitted.

4 (Defendant's Exhibits 120 and 120 were received)

5 THE COURT: The motion will be taken under submission.

6 Does the Defense wish to call any witnesses?

7 MR. BROWN: Yes, Your Honor.

8 MR. GUNN: Your Honor, our first witness would be Sun
9 Ro.

10 MS. DONAHUE: He needs an interpreter.

11 MR. GUNN: Oh, yes, Your Honor. I'm sorry.

12 THE COURT: The interpreter has already been sworn.

13 Sir, you are still under oath.

14 Would you swear in the witness.

15 Sun Ro, Defendant's witness, was sworn

16 THE CLERK: Thank you. Please take the witness stand.
17 Please state your full name and spell your full name for the
18 record.

19 THE WITNESS: My name is Sun Ro.

20 THE COURT: Interpreter spelling, please.

21 THE WITNESS: S-U-N, R-O. Sun Ro.

22 THE COURT: You may proceed.

23 MR. GUNN: Thank you, Your Honor. I would ask to
24 question the witness as an adverse witness in light of the fact
25 that he was the lead investigator in Cambodia.

1 THE COURT: You may.

2 DIRECT EXAMINATION

3 BY MR. GUNN:

4 Q. It is Mr. Sun? I am asking is it Mr. Sun as opposed to
5 Mr. Ro?

6 A. Either one.

7 Q. Mr. Sun, do you recall that one of the victims or alleged
8 victims in this case was a girl named I.T.?

9 A. I.T.?

10 Q. Yes.

11 A. This is national police that took care of that case. I do
12 not know.

13 Q. But do you recall -- you were involved in the investigation
14 of Michael Pepe; correct?

15 A. Yes. I did look at the file before I proceed the
16 investigation.

17 Q. And you interviewed witnesses and participated in getting a
18 search warrant; correct?

19 A. Is that the case of I.T. or it's my personal investigation?

20 Q. Do you recognize Michael Pepe who is sitting over here at
21 our counsel table?

22 A. Yes.

23 Q. And you participated or even led the investigation that
24 resulted in his arrest; correct?

25 A. Yes.

1 Q. And that investigation was sort of started, at least for
2 you, when Gary Phillips, sitting at the end of the prosecutor's
3 table here, provided you with information; correct?

4 A. Yes.

5 Q. And when Mr. Phillips provided you with information, did he
6 tell you that a photograph of Michael Pepe had been shown to one
7 of the alleged victims and she had said that was not the man?

8 A. Who show the picture?

9 Q. Did Gary Phillips, who is sitting here at the end of the
10 prosecutor's table -- he provided information for you for the
11 investigation; right?

12 A. Yes. Yes. Just information. No picture involved.

13 Q. When he provided you that information, did he also tell you
14 that he had shown a picture of Michael Pepe to I.T. -- to one of
15 the -- strike that.

16 Actually, Your Honor, if I could withdraw and rephrase
17 the question?

18 THE COURT: No. It's as if the witness is here in
19 English, so the translation continues and then you can ask
20 another question.

21 MR. GUNN: All right.

22 THE WITNESS: Can you please repeat again?

23 BY MR. GUNN:

24 Q. Yes. When Gary Phillips provided you with information
25 before Michael Pepe was arrested, did he tell you that a

1 photograph of Michael Pepe had been shown to one of the alleged
2 victims and the alleged victim has said that's not the man?

3 A. I -- I do not know, you know, the picture that he showed.
4 I don't know what picture.

5 Q. So he never told you anything about that?

6 A. Only the report of the case. The activity of the victim
7 I.T..

8 Q. And he didn't tell you that I.T. had been shown a picture
9 of Michael Pepe and said that's not the man, did he?

10 MS. DONAHUE: Objection. Asked and answered.

11 THE COURT: Overruled.

12 THE WITNESS: That I do not recall. I only did
13 receive the report. I took that information and proceed with
14 the investigation.

15 BY MR. GUNN:

16 Q. You examined -- after the search warrant, after the search
17 in this case, you examined some photographs on a thumb drive
18 that was seized; is that correct?

19 A. At the time I did receive a report from the city regarding
20 the investigation to control the activity which has led to the
21 arrest of Mr. Michael.

22 Q. That wasn't quite my question. It's a little more
23 specific.

24 After the search of Michael Pepe's house, you examined
25 some photographs from a thumb drive that was seized; correct?

1 A. Yes.

2 Q. And one of the things you were looking for was a mole on
3 the inner thigh of Mr. Pepe; correct?

4 A. Yes.

5 Q. And did you find a photograph that you believed showed such
6 a mole?

7 A. Yes. It was in the -- on the picture. Yes.

8 Q. Would you look at Defense Exhibit 302.

9 Could I have Defense Exhibit 302 placed in front of
10 the witness, Your Honor?

11 THE COURT: Yes.

12 MR. GUNN: I have an extra copy, Your Honor, I believe
13 in the file folder over here.

14 THE COURT: Please.

15 BY MR. GUNN:

16 Q. Is Defense Exhibit 302 the photograph that you found that
17 you believed showed such a mole?

18 A. I don't think this is the picture.

19 Q. Are you certain? Or you just don't think so?

20 A. Yes. Because this picture doesn't show the whole thigh.

21 Q. If I could get my copy back.

22 THE COURT: Sure.

23 MR. GUNN: I will also need, Your Honor, Defense
24 Exhibit 131 placed in front of the witness and Defense
25 Exhibit 117. If I could step over, I can get that.

1 THE COURT: Okay.

2 MR. GUNN: Is 131 hopefully available?

3 THE CLERK: 131 and 117?

4 MR. GUNN: Yes. Do you have 117? I'm not sure you
5 have 117 yet.

6 THE CLERK: I only have 131.

7 THE COURT: Go ahead and give the witness 131.

8 MR. GUNN: If I could approach with 117, Your Honor.

9 THE COURT: You may.

10 MR. GUNN: Here is both a Cambodian version and an
11 English version.

12 Q. I'd like you first -- you took statements from a number of
13 people in connection with this case; correct?

14 A. In this case, I did not interview the witness myself. I
15 did order someone who worked for me to do the work.

16 Q. Would you --

17 THE COURT: Mr. Sun, this will go much more quickly if
18 you'll just listen to Mr. Gunn's questions and answer only the
19 question that he is asking you.

20 THE WITNESS: Okay.

21 THE COURT: Thank you.

22 BY MR. GUNN:

23 Q. Would you look at Defense Exhibit 117, the Cambodian
24 portion.

25 That's a report which describes taking a statement

1 from a woman named Ly Kim Eng; correct?

2 A. Yes.

3 Q. And it's a statement you took or at least signed off on;
4 right?

5 A. Yes. My colleague that work did the interview.

6 Q. And you actually signed off on the statement at the end;
7 correct?

8 A. Yes.

9 Q. So this is an official Cambodian police document that you
10 approved; correct?

11 A. Yes.

12 Q. And it reflects that you -- that Ly Kim Eng made a
13 statement; correct?

14 A. Yes.

15 Q. And it reflects in the last paragraph or so that she came
16 back to --

17 MS. DONAHUE: Objection. This is going to call for
18 hearsay.

19 MR. GUNN: Your Honor, it's a prior inconsistent
20 statement with respect to something said in the deposition,
21 which of course hasn't been played yet.

22 THE COURT: And I'll guess we'll wait.

23 MR. GUNN: All right.

24 THE COURT: You have the document.

25 MR. GUNN: Then I would need to recall Sun Ro at that

1 time.

2 THE COURT: You have the document.

3 MR. GUNN: All right. As long as we can reflect it
4 from the document, that would be fine.

5 Q. Would you now look at Defense Exhibit 131, Mr. Sun.

6 That is another official report of an interview in
7 connection with this case; right?

8 A. Yes.

9 Q. And it reflects an interview of a girl named L.K.xxx;
10 correct?

11 A. Yes.

12 Q. And it reflects that one part of the statement she made was
13 about when Mr. Pepe allegedly first raped her; correct?

14 A. Yes.

15 Q. And she said it was about one week after she was brought to
16 the house or came to the house; correct?

17 A. Yes. That's the report.

18 MR. GUNN: If I could have just one moment,
19 Your Honor.

20 THE COURT: Sure.

21 MR. GUNN: I don't believe I have any further
22 questions of this witness. As I understand the Court's ruling,
23 we can elicit what's in the report without the witness
24 afterwards, if it's inconsistent.

25 THE COURT: Assuming I otherwise find it's

1 appropriate.

2 MR. GUNN: All right. As long as we don't have to
3 re-call him.

4 THE COURT: Does the Government want to cross-examine?

5 MS. DONAHUE: I have no questions.

6 THE COURT: Thank you, sir. You are excused.

7 MR. GUNN: Next I would like to read a stipulation
8 into the record regarding two witnesses testimony.

9 THE COURT: All right. You may do that.

10 MR. GUNN: Ladies and gentlemen, this is a stipulation
11 entered into by the parties.

12 "It is hereby stipulated by and between plaintiff,
13 United States of America, through its counsel of record,
14 Assistant United States Attorney Patricia Donahue and Assistant
15 United States Attorney John Lulejian, and defendant Michael
16 Pepe, through his counsel of record, Deputy Federal Public
17 Defender Charles Brown and Deputy Federal Public Defender
18 Carlton F. Gunn as follows:

19 "One, Dr. Laura Watson shall be deemed to have been
20 recalled as a witness and testified that the report identified
21 as Defense Exhibit 130 accurately reflects what L.K.xxx told her
22 about being raped."

23 And, Your Honor, I would offer Defense Exhibit 130
24 into evidence.

25 THE COURT: All right.

1 MS. DONAHUE: No objection.

2 THE COURT: That will be admitted.

3 (Defendant's Exhibit 130 was received)

4 MR. GUNN: "Two, James Pond shall be deemed to have
5 been called as a witness and testified as follows:

6 "A, he formerly worked as a director of the Agape
7 Restoration Center in Phnom Penh, Cambodia.

8 "B, he was working in that position when L.K.xxx and
9 S.R.xxx arrived at the center in August 2006 and continued to
10 work there through June 2007.

11 "C, on the eve -- on the eve of a Cambodian court
12 proceeding for Basang, Ly Kim Eng and Cum Lang, S.R.xxx and
13 L.K.xxx said Pepe had been good to them."

14 THE COURT: All right. Thank you.

15 MR. GUNN: That stipulation is signed by counsel and
16 Mr. Pepe, Your Honor.

17 THE COURT: All right. Thank you.

18 MR. GUNN: Our next witness, Your Honor, would be
19 Taekuk Cho, if I am pronouncing that correctly.

20 THE COURT: All right. Does this witness need an
21 interpreter?

22 MR. GUNN: No, Your Honor. This is an American agent.
23 Taekuk Cho, Defendant's witness, was sworn

24 THE CLERK: Please take the witness stand. Please;
25 state your full name and spell your full name, please.

1 THE WITNESS: My first name is Taekuk, one word.

2 T-A-E-K-U-K. Last name is Cho. C-H-O.

3 THE COURT: You may proceed.

4 DIRECT EXAMINATION

5 BY MR. GUNN:

6 Q. Mr. Cho, you interviewed two of the alleged victims in this
7 case, K.S.x and T.C.xx; correct?

8 A. Yes, sir. That's correct.

9 Q. When you interviewed K.S.x, you talked to her about the
10 allegations; correct?

11 A. Yes, sir. That's correct.

12 Q. And some of what she claimed the underlying facts were;
13 correct?

14 A. Can you repeat the question?

15 Q. Some of what she claimed the underlying facts were?

16 THE COURT: I don't even understand that.

17 MR. GUNN: I will withdraw the question, Your Honor.

18 Q. You interviewed her about what she said happened; right?

19 A. That's correct, sir.

20 Q. And one of the things she told -- one of the people
21 involved in the case, as you understood it, was a woman named
22 Basang or Sang; correct?

23 A. That's correct, sir.

24 Q. And she told you that Sang was her Auntie; correct?

25 A. She called her Auntie, yes, sir.

1 Q. She told her -- she was an Auntie; right? That's what she
2 said?

3 A. That's correct.

4 Q. She also indicated that when she was at the house, L.K.xxx,
5 S.R.xxx and S.S.xxx were there; correct?

6 A. I believe that's correct, sir.

7 Q. Would you like to look at a transcript --

8 A. Do you mind if I refer to a transcript?

9 THE COURT: You may do that.

10 BY MR. GUNN:

11 Q. Please. Do you have it with you?

12 A. Yes, I do.

13 Q. That would be fine. If you would look at Page 21.

14 A. Yes, sir.

15 Q. She did say that; correct?

16 A. L.K.xxx, S.S.xxx, S.R.xxx.

17 Q. And she said those girls were living there at the time that
18 she was there; correct?

19 A. That's correct, sir.

20 Q. Now, going to your interview of T.C.xx, you also
21 interviewed her; correct?

22 A. I did, sir.

23 Q. And she also talked to you about what she said happened;
24 right?

25 A. That's correct, sir.

1 Q. And there is also a transcript and that interview was
2 videotaped; right?

3 A. Yes.

4 Q. And she told you that her mother did speak to Sang or
5 Basang before she went to Michael's house; correct?

6 A. That's correct, sir.

7 Q. She also told you that the way she got home was her mother
8 came to pick her up at Michael's house; correct?

9 A. May I refer to the transcript, sir?

10 Q. Yes. There are five transcripts in that case, that
11 interview, right? If you would look at No. 5, Pages 11 through
12 12.

13 A. Sir, do you mind repeating the question?

14 Q. Yes. My question was she told you that her mother came to
15 Michael's house to pick her up and that's how she left; correct?
16 If you look on Page 11, about eight lines down from the top.

17 A. Yes. I'm just reading it, sir.

18 Okay, sir, can you repeat your question?

19 Q. Yes. She told you that her mom came and took her out of
20 the house; correct?

21 A. She advised that her mother went to the house, her mother
22 followed Basang, went inside the house and took her child out
23 from the house, yes, sir.

24 Q. More directly and specifically at one point she was asked,
25 "How did you get out of the house" and she said, "My mom took me

1 out"; right?

2 A. That's correct, sir.

3 Q. And finally she also told you not that there was someone
4 else in the room when she was raped, but that there was no one
5 else in the room when she was raped; correct?

6 A. Can you please refer to the transcript?

7 Q. If you'd look at the second transcript at Page 14, about
8 four or five lines down.

9 A. Okay. Your question was, sir?

10 Q. She told you not that there was someone else in the room
11 when she was raped, but that there was no one else in the room
12 when she was raped; correct?

13 A. The question I asked, sir, was was there anyone else in the
14 room, and her response was no.

15 Q. Her response was?

16 A. No.

17 Q. No. Thank you.

18 If I could consult with co-counsel for a moment,
19 Your Honor?

20 THE COURT: Yes.

21 (Mr. Brown and Mr. Gunn confer off the record)

22 MR. GUNN: No further questions, Your Honor.

23 THE COURT: Any cross, Ms. Donahue? Will it be brief
24 because it's about time for a break. Or should we take our;
25 break first.

1 MS. DONAHUE: It's pretty short. It's up to you.

2 CROSS-EXAMINATION

3 BY MS. DONAHUE:

4 Q. Special Agent Cho, you are actually a special agent with
5 Immigration and Customs Enforcement; is that right?

6 A. Yes, ma'am, that's correct.

7 Q. And you are not the case agent in this case; is that
8 correct?

9 A. That's correct, ma'am, I am not.

10 Q. You were asked to interview T.C.xx and K.S.x in connection
11 with this investigation; is that right?

12 A. That's correct, ma'am.

13 Q. You interviewed T.C.xx on August 25th of 2006; is that
14 right?

15 A. That's correct, ma'am.

16 Q. You interviewed K.S.x about a month later on September 27
17 of 2006; is that right?

18 A. That's correct, ma'am.

19 Q. And at each of those interviews, there were four people
20 present; is that right?

21 A. That's correct, ma'am.

22 Q. You, the child --

23 MR. GUNN: I object to leading in light of the fact
24 that this is an adverse Defense witness.

25 THE COURT: Overruled. Let's just get to it.

1 BY MS. DONAHUE:

2 Q. You, the child and a Vietnamese interpreter and someone
3 from the U.S. State Department who spoke Khmai; is that right?

4 A. That's correct, ma'am. He was a state department
5 investigator.

6 Q. In each of these interviews, the -- both T.C.xx and K.S.x
7 spoke Vietnamese rather than Khmai to you; is that correct?

8 A. That's correct, ma'am.

9 Q. Why did you choose a Vietnamese interpreter?

10 A. We did not choose the interpreter. When the State
11 Department investigator and I went there, we assumed that the
12 interview was going to be conducted in the Khmer language which
13 is Khmai.

14 We were, prior to the commencement of the interview --
15 we were advised by the Vietnamese interpreter, along with the
16 child, that the -- the native tongue of both T.C.xx and K.S.x
17 was Vietnamese and that's the language that they understood and
18 wished to conduct the interview in. That's why we conducted the
19 interview in Vietnamese.

20 Q. Are both of those girls Vietnamese?

21 A. That's correct, ma'am.

22 Q. There is another term for it, I think it's called
23 Kampuchekrom; is that correct? Or am I mispronouncing it?

24 A. There is Kampuchekrom, but my understanding is that these
25 girls are actually ethnic Vietnamese that immigrated into

1 Cambodia.

2 Q. Do you know whether two years later their Khmai improved to
3 the point where they now speak Khmai?

4 A. My understanding --

5 MR. GUNN: Objection. No personal knowledge.

6 THE COURT: Overruled. You can answer -- if you know,
7 you can answer.

8 THE WITNESS: My understanding is --

9 THE COURT: No. If you know.

10 BY MS. DONAHUE:

11 Q. Do you know what their language preference is today?

12 A. No, ma'am, I do not.

13 MS. DONAHUE: I have no further questions.

14 MR. GUNN: Could I have one moment, Your Honor?

15 THE COURT: Yes.

16 (Mr. Brown and Mr. Gunn confer off the record)

17 REDIRECT EXAMINATION

18 BY MR. GUNN:

19 Q. These interviews were conducted, agent, at, where? World
20 Hope International?

21 A. Negative, sir. It was at the U.S. Embassy in Phnom Penh,
22 Cambodia.

23 Q. But they were brought there by World Hope International?

24 A. By a representative from World Hope International, that's
25 correct, sir.

1 Q. The people who interpreted or the Vietnamese person who
2 interpreted was a World Hope International representative?

3 A. That's correct, sir, along with a State Department
4 investigator.

5 Q. The State Department investigator, though, spoke the Khmer?

6 A. That's correct.

7 Q. The Vietnamese was the World Hope investigator --
8 interpreter?

9 A. That's correct, sir.

10 MR. GUNN: No further questions.

11 THE COURT: Ms. Donahue?

12 MS. DONAHUE: Nothing further.

13 THE COURT: Sir, you are excused after you spell
14 anything that my court reporter needs spelled.

15 Ladies and gentlemen, don't talk about the case or
16 form or express any opinions about the case until it's finally
17 submitted to you. We will take a 15 minute break.

18 (Recess taken)

19 (Jury Out)

20 MR. GUNN: We have one exhibit that I may be offering
21 during the next period of time. The Government is objecting to
22 it. I have a copy. I will give the original right now to the
23 Court along with a copy. 126.

24 THE COURT: Thank you.

25 MR. GUNN: I will explain to court when the Court is

1 ready.

2 THE COURT: Yes.

3 MR. GUNN: Your Honor, this record is relevant and we
4 wish to admit it because it shows that the girl Ngoc, who is
5 probably also the girl Nap, was over 18. It shows she was 19.

6 There is two reasons -- first of all, I think it's
7 relevant for a non-hearsay purpose in terms of Mr. Pepe's state
8 of mind about her age. This document was found in his house.

9 Second, if it weren't -- I think it should be
10 substantively admitted, Your Honor, because this is an example
11 of where due process concerns are raised by the case from
12 Cambodia being prosecuted in this country.

13 If it were in the United States, obviously we could
14 subpoena the entity that this record was from and put it into
15 evidence. We can't do that because we don't have subpoena power
16 over Laboratoire D'Analyse in Cambodia. So we would first ask
17 to offer it for the non-hearsay purpose and Mr. Pepe's state of
18 mind, and second, we think it should be substantively admitted
19 in any event. We would lay the foundation or get a stipulation
20 from the Government that it was found in the house.

21 MR. LULEJIAN: Your Honor, we don't dispute that this
22 document was found inside Mr. Pepe's house. The problem is it's
23 classic hearsay within hearsay. The issue is we don't know who
24 this Ngoc is. We don't know if it's the same Ngoc that's -- is;
25 that Nap. In addition, we don't know how they found out what

1 her age was. Was a medical test done, did they ask her, did
2 somebody else tell her. We don't know any of these things.
3 There is no reliability to it. It's classic hearsay.

4 THE COURT: The document will be admitted.

5 MR. GUNN: Thank you, Your Honor.

6 (Defendant's Exhibit 126 was received)

7 (Jury In)

8 THE COURT: Steve, we have another witness. Who are
9 you going to call, Mr. Gunn?

10 MR. GUNN: Your Honor, agent Hung Nguyen.

11 Hung Nguyen, Defendant's witness, was sworn

12 THE CLERK: Thank you. Please take the witness stand.
13 Please state your full name and spell your full name, please.

14 THE WITNESS: My name is Hung Nguyen. First name
15 spelled H-U-N-G. Last name is spelled N-G-U-Y-E-N.

16 THE COURT: You may proceed.

17 MR. GUNN: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. GUNN:

20 Q. Mr. Nguyen, you also interviewed one of the alleged victims
21 in this case, did you not?

22 A. Yes, sir.

23 Q. That was a girl named NTDx?

24 A. Yes, sir.

25 Q. And you interviewed her about what she claimed had happened

1 to her at Michael Pepe's house; is that correct?

2 A. That's correct, sir.

3 Q. And she told you that there were four children living in
4 the house when the things that happened to her happened to her
5 but that they were not there at the time; correct?

6 A. That's what the woman who lured her into the house told
7 her, sir, actually related back it to me.

8 Q. Okay.

9 Well, she told you that was, in fact, the case; right?

10 A. Yes, sir.

11 Q. She told you that at the time she was supposedly abused,
12 there were no other girls in the house?

13 A. That's correct, sir.

14 Q. That she thought they were living there because their
15 things were there but they weren't there; correct?

16 A. That's correct, sir.

17 MR. GUNN: No further questions, Your Honor.

18 THE COURT: Cross-examination?

19 CROSS-EXAMINATION

20 BY MS. DONAHUE:

21 Q. Special Agent Nguyen, you're with Immigration and Customs
22 Enforcement; is that correct?

23 A. That's correct.

24 Q. And was it in your capacity as a special agent with
25 Immigration and Customs Enforcement that you were assigned to

1 conduct this interview?

2 A. Yes, ma'am.

3 Q. And this interview was NTDx, N-T-D-x; is that correct?

4 A. That's correct.

5 Q. And this interview took place on November 3rd of 2006; is
6 that right?

7 A. That's correct.

8 Q. What language was the interview conducted in?

9 A. The language was conducted in Vietnamese.

10 Q. Did you use an interpreter?

11 A. No, I did not.

12 Q. Why not?

13 A. I am fluent in Vietnamese and I asked NTDx if she spoke --
14 what language she spoke. She told me she spoke Khmer and
15 Vietnamese and told me that she was stronger in Vietnamese, so I
16 conducted the interview in Vietnamese.

17 MS. DONAHUE: I have no further questions.

18 THE COURT: Redirect?

19 MR. GUNN: Could I have one moment, Your Honor?

20 THE COURT: Yes.

21 (Mr. Brown and Mr. Gunn confer off the record)

22 REDIRECT EXAMINATION

23 BY MR. GUNN:

24 Q. Mr. Nguyen, were you stationed in Phnom Penh or that area
25 at the time?

1 A. I'm stationed at the time in -- still in Bangkok, Thailand
2 but we covered Cambodia and --

3 Q. And you work with Gary Phillips here?

4 A. Yes, sir.

5 Q. That was true during the period -- how long have you been
6 stationed there?

7 A. Since September 3rd, 2006, sir.

8 Q. September 3rd, 2006?

9 A. That's correct.

10 MR. GUNN: No further questions.

11 THE COURT: Ms. Donahue.

12 RE CROSS EXAMINATION

13 BY MS. DONAHUE:

14 Q. You were assigned to -- first assigned to Bangkok in
15 September of 2006; is that right?

16 A. That's correct, ma'am.

17 MS. DONAHUE: I have no further questions.

18 THE COURT: All right. Thank you, sir. You're
19 excused.

20 Does the Defense have another witness?

21 MR. GUNN: Yes, Your Honor. Our next witness would be
22 Keith Williams. If I could get some exhibits out of my box.

23 THE COURT: Sure.

24 E. Keith Williams, Defendant's witness, was sworn

25 THE CLERK: Please take the witness stand. Please

1 state your full name and spell your last name for the word.

2 THE WITNESS: E Keith Williams. W-I-L-L-I-A-M-S.

3 THE COURT: You may proceed.

4 MR. GUNN: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. GUNN:

7 Q. Mr. Williams, how are you employed?

8 A. With the Federal Public Defender's Office in Los Angeles.

9 Q. What is your position there?

10 A. I'm the chief investigator of the trial unit.

11 Q. What are your duties as the chief investigator of the trial
12 unit?

13 A. To supervise a number of trial investigators, to assign
14 cases, to work cases myself. And generally help to supervise in
15 the office.

16 Q. How long have you worked in the federal public defender's
17 office as investigator?

18 A. Approximately 18 years.

19 Q. How were you employed before that?

20 A. As a private investigator.

21 Q. Were you assigned or did you assign yourself as the
22 investigator in this case of the United States versus Michael
23 Pepe?

24 A. I assigned myself.

25 Q. And was one of the things we asked you to do to take some

1 photographs of Mr. Pepe's inner thigh?

2 A. Yes, I did.

3 Q. Would you recognize those photographs if you were shown a
4 copy?

5 A. Yes, I would.

6 MR. GUNN: Your Honor, if I could approach with an
7 exhibit.

8 THE COURT: If the Government has seen them.

9 MR. GUNN: Yes. It's been previously disclosed. I am
10 also giving them a copy.

11 THE COURT: Thank you.

12 MR. GUNN: If I could approach. I have an exhibit and
13 a copy for the Court. This would be -- if we could have it as
14 310, Your Honor.

15 THE COURT: All right.

16 (Defendant's Exhibit 310 was marked)

17 MR. LULEJIAN: Your Honor, for the record, this is the
18 first time the Government is seeing this.

19 THE COURT: Okay.

20 MR. GUNN: I believe I disclosed it, Your Honor, so --

21 THE COURT: Don't -- just ask a question.

22 MR. GUNN: All right, Your Honor.

23 Q. Mr. Williams, would you look at Defense Exhibit 310.

24 A. Yes.

25 Q. And are those photographs of Mr. Pepe's inner thigh that

1 you took?

2 A. Yes.

3 Q. And now there's a date down there of 2008, 01-04. Is that
4 an accurate date?

5 A. Yes, it is.

6 Q. Are you certain of that?

7 A. Yes, I am.

8 MR. GUNN: Your Honor, I would offer Defense
9 Exhibit 310 into evidence.

10 THE COURT: Any objection?

11 MR. LULEJIAN: No objections.

12 THE COURT: All right. Those will come in. They are
13 all 310?

14 MR. GUNN: Yes, Your Honor. It's a set.

15 THE COURT: That's fine.

16 (Defendant's Exhibit 310 was received)

17 MR. GUNN: Could I publish, Your Honor, so the jury
18 can see 310?

19 THE COURT: You may.

20 MR. GUNN: Should we maybe shut off the upper screen.

21 THE COURT: Okay.

22 MR. GUNN: This is the first photograph, Your Honor.

23 THE COURT: All right.

24 MR. GUNN: This is the second photograph. And this is
25 the third photograph.

1 THE COURT: I have four.

2 MR. GUNN: That's my mistake. I think the one I just
3 showed was the fourth photograph, Your Honor -- I'm sorry. This
4 would be fourth photograph.

5 THE COURT: All right. Thank you.

6 BY MR. GUNN:

7 Q. Mr. Williams, did you also accompany us -- and I did move
8 310 into evidence, I believe?

9 THE COURT: You did.

10 BY MR. GUNN:

11 Q. Did you also accompany myself and Mr. Brown on an
12 investigation trip to Cambodia?

13 A. Yes, I did.

14 Q. And when was that?

15 A. One was November of '07 and once in February of '08.

16 Q. When we went to Cambodia in November, was one of the things
17 we did or we asked you to do, try to make a purchase of a drug
18 or medication called Rohypnol?

19 A. Yes.

20 Q. What did you do?

21 A. We were in our van that was being driven by the driver that
22 we hired to get us around Phnom Penh and I saw a kiosk for a
23 pharmacy company that I recognized from reading in our
24 discovery, and we stopped and we went inside and through our
25 interpreter that we had who spoke Khmer, we asked the pharmacist

1 behind the counter if he had in stock the drug Rohypnol, and
2 after the translator and the person behind the counter spoke for
3 a few seconds, the person behind the counter went to his
4 shelving and came back with a box and asked if this is what we
5 were looking for.

6 Q. And was it -- did the box say Rohypnol?

7 A. Yes, it did.

8 Q. What happened then?

9 A. We paid for the Rohypnol and I took a business card and we
10 kept -- kept it with us.

11 Q. Did the pharmacist ask for a prescription of any sort?

12 A. No, he did not.

13 MR. GUNN: Your Honor, if I could have another exhibit
14 marked.

15 THE COURT: You may.

16 MR. GUNN: If I could hand one to counsel and approach
17 with the original and with a copy for the Court. If we could
18 call this 602, it's premarked.

19 (Defendant's Exhibit 602 was marked)

20 BY MR. GUNN:

21 Q. Would you look at Defense Exhibit 602, Mr. Williams.

22 A. Okay.

23 Q. Do you recognize that?

24 A. Yes, I do.

25 Q. What is it?

1 A. It is an -- I opened up the box so I could place it flat
2 and take a photograph of it.

3 Q. You're talking about the first page?

4 A. Yes.

5 MR. GUNN: Your Honor, I am going to eventually set a
6 foundation for the other pages but if I could at least offer the
7 first page in evidence now and publish it.

8 THE COURT: Does the Government have any objection to
9 any of these pages?

10 MR. LULEJIAN: None of these pages.

11 THE COURT: All right. Then they will all come in,
12 Mr. Gunn.

13 (Defendant's Exhibit 602 was received)

14 BY MR. GUNN:

15 Q. Mr. Williams, is this --

16 A. Yes.

17 Q. The -- that's the box flattened out?

18 A. Yes.

19 Q. Or a picture of it?

20 A. Yes.

21 Q. And what's the second page --

22 THE COURT: We don't have the screen on; I don't think
23 there is any reason to have it off so. . .

24 MR. GUNN: Correct, Your Honor. I'm sorry.

25 THE COURT: Except that we can't turn it back on. But

1 other than that.

2 THE CLERK: One moment, Your Honor.

3 THE COURT: There we go. Thanks.

4 BY MR. GUNN:

5 Q. Would you look at the second page, Mr. Williams?

6 A. Yes.

7 Q. What's that?

8 A. The second page --

9 Q. First of all, is this the second page that is on the screen
10 now?

11 A. Yes, it is. This is a photograph of the document that came
12 inside the box of Rohypnol.

13 Q. Does it appear to be instructions but in French rather than
14 English?

15 A. Yes, it does.

16 Q. And after you purchased the Rohypnol or after you purchased
17 the Rohypnol and went back to the hotel, did we ask you to
18 conduct an experiment of any sort or take some additional
19 photographs?

20 A. Yes, you did.

21 Q. What did we ask you to do and what did you do?

22 A. I opened up the box, I took the Rohypnol out. The pills
23 themselves were contained in -- pardon me -- like aluminum
24 foil -- individual aluminum foil package -- packages. I opened
25 up one -- I took photographs of the entire pack.

1 Q. Showing you the fourth page of Government Exhibit --

2 Defense Exhibit 602, first of all, are those photographs of the
3 pills?

4 A. Yes.

5 Q. The way they came out of the box?

6 A. Yes.

7 Q. Go ahead.

8 A. I placed them on the coffee saucer to give an idea of how
9 large the package was, and I also placed a regular coffee spoon
10 there to further give an idea how large the package was. And I
11 took a close-up also.

12 I took one of the pills out of the -- excuse me -- out
13 of the aluminum foil individual packs and placed it on top of a
14 folded piece of legal paper, yellow paper to --

15 Q. Is that what is shown on the next page?

16 A. Yes. And I did that to demonstrate its color and size as
17 best I could.

18 Q. What was that color?

19 A. It was a bluish green.

20 Q. And so what did you do after you put the complete -- the
21 single pill on the yellow piece of paper there?

22 A. I took the back end of the spoon and tried to crush it
23 using it like a pestle -- not a gun -- but a pestle that grinds
24 up, say, foods and pills.

25 Q. And what did you do then? Is that reflected on the next

1 page?

2 A. It's on the next page, yes. The next thing I did was I
3 took the crumbled pill and poured it into the bottom of a
4 drinking glass that was in the hotel, empty.

5 Q. By the way -- I'm sorry, go ahead.

6 A. It was empty. The glass was empty at that point and I
7 poured the dry pill in the bottom of the dry glass.

8 Q. What was the color when you ground it up? Did the color
9 change at all?

10 A. No, it did not.

11 Q. All right.

12 And then what did you do after you had done this step?

13 A. I kind of poured some water on -- on the top of it and
14 without stirring it or anything, took another photograph.

15 Q. And is that reflected on the next page here?

16 A. It's actually reflected on -- with the -- the page in --
17 the other one, yes. The larger -- yes. The close-up is it.

18 Q. That's after you poured water in it?

19 A. Yes.

20 Q. After you poured the water in, what did you do?

21 A. I took a photograph from the side to demonstrate what it
22 looked like -- what the pill looked like after pouring water on
23 it. So shooting, I guess, straight through the glass from the
24 side. And then I stirred it up with --

25 Q. Before you talk about that, let me ask you a question.

1 Did you let it sit in the water for a while to see if
2 it dissolved on its own?

3 A. Yes, I did.

4 Q. Did it?

5 A. Not much.

6 Q. Then what did you do?

7 A. I took the spoon and stirred up the pill in the water and
8 that is reflected in the bottom photograph or the left
9 photograph there as it is on the screen.

10 Q. And the water then turned blue green?

11 A. Yes.

12 Q. Same color as the pill?

13 A. Yes.

14 MR. GUNN: Your Honor, I am sorry. I have some Jencks
15 material I should give to the Government.

16 THE COURT: All right.

17 MR. GUNN: I have no further questions, Your Honor.

18 THE COURT: Any cross-examination?

19 MR. LULEJIAN: Yes, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. LULEJIAN:

22 Q. Mr. Williams, what kind of a camera did you use to take the
23 pictures of Mr. Pepe's inner thigh?

24 A. I used a digital Canon camera.

25 Q. What resolution?

1 A. I'm sorry. On Mr. -- on the -- I don't know how to answer
2 that question.

3 Q. What model number is it?

4 A. Don't know how to answer that question either.

5 Q. How good is the quality of that camera?

6 A. I don't know how to compare it to -- to what, in terms of
7 quality.

8 Q. Did you use the same camera to take the pictures of the
9 Rohypnol that you dissolved?

10 A. Yes.

11 Q. With respect to Defense Exhibit 310, the -- in total, how
12 many photographs did you take of Mr. Pepe's inner groin?

13 A. All totaled?

14 Q. Yes, sir.

15 A. I would have to guess. I can't remember.

16 Q. What is that guess?

17 A. I would say 10 to 14.

18 Q. This exhibit that you presented only has four pages?

19 A. Yes.

20 Q. This exhibit doesn't contain all the photographs that you
21 took of Mr. Pepe's groin?

22 A. At this juncture -- during this set of photography, no.

23 Q. In fact, if you take a good look at this, the pictures --
24 much of the portion of Mr. Pepe's inner groin is blurry; isn't
25 it?

1 A. Yes.

2 Q. It's hard to make out what is there?

3 A. Yes.

4 Q. In fact, you don't have any formal training as a
5 dermatologist, do you?

6 A. No.

7 Q. Let's talk about the Rohypnol a little.

8 When you purchased the Rohypnol, you said you took it
9 back to the room and then ground it up; is that correct?

10 A. Yes.

11 Q. You ground it up using the spoon?

12 A. Yes.

13 Q. Was it easy to break up?

14 A. No.

15 Q. What did you have to do? Apply some force?

16 A. Yes.

17 Q. But once you applied the force, the pill broke up?

18 A. Yes.

19 Q. Then you said you put it in a glass?

20 A. Yes.

21 Q. And you poured some water into it?

22 A. Yes.

23 Q. And you stirred it up and it turned blue?

24 A. Yes.

25 Q. You didn't pour any other liquid in there, did you?

1 A. No, I did not.

2 Q. You didn't pour any coke in there, did you?

3 A. No.

4 Q. You didn't put any Pepsi in there?

5 A. No.

6 Q. You didn't pour anything that was opaque color in there?

7 A. No.

8 Q. So you don't know what the effects would be of the change
9 of color of say a dark or black liquid, do you?

10 A. No, I don't.

11 Q. Did you perform any of the same tests on any of the other
12 sedatives found at the defendant's residence?

13 A. Say that again.

14 MR. GUNN: Objection. No foundation that he had
15 access to any of those.

16 THE COURT: Overruled.

17 BY MR. LULEJIAN:

18 Q. Did you perform the same tests on codeine?

19 A. No, I did not.

20 Q. Did you perform the same tests on morphine?

21 A. No, I did not.

22 Q. Did you perform the same tests on Temazepam?

23 A. No, I did not.

24 Q. Did you perform the same tests on Alprazolam?

25 A. No, I did not.

1 Q. The only drug you actually tested was the Rohypnol?

2 A. Yes.

3 MR. LULEJIAN: No further questions.

4 THE COURT: Redirect?

5 MR. GUNN: No further questions.

6 THE COURT: Thank you. Thank you, sir. You are
7 excused.

8 Does the Defense have any other witnesses?

9 MR. GUNN: Yes, Your Honor. We call Paul Carbone.

10 Paul Carbone, Defendant's witness, was sworn

11 THE CLERK: Please take the witness stand. Please
12 state your full name and spell your last name for the record.

13 THE WITNESS: Paul Carbone, C-A-R-B-O-N-E.

14 THE COURT: You may proceed.

15 MR. GUNN: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. GUNN:

18 Q. Mr. Carbone, how are you employed?

19 A. By the Department of Immigration and Customs Enforcement
20 Investigations.

21 Q. You are an ICE agent?

22 A. Yes.

23 Q. You are one of the agents who has at least helped with the
24 investigation in this case; correct?

25 A. Yes, I am.

1 Q. And you have been familiar with some of the facts of the
2 case; correct?

3 A. Yes, I have.

4 Q. You have been on several trips to Cambodia to participate
5 in investigations or run a camera at a deposition, for example?

6 A. Yes.

7 Q. One of the medications you understood was found in
8 Mr. Pepe's house in this case was a medication called Rohypnol;
9 correct?

10 A. Yes.

11 Q. So as part of the investigation in this case, you and Agent
12 Gary Phillips went out to see if you could buy Rohypnol in
13 Cambodia; correct?

14 A. Yes.

15 Q. And you were able to buy it at a major pharmacy called
16 Pharmacy De La Gere, weren't you?

17 A. Yes.

18 Q. The pharmacist there did not ask for a prescription when
19 you asked for it; right?

20 A. No.

21 Q. And you didn't tell her you were law enforcement agents;
22 right?

23 A. No, we did not tell her.

24 Q. You were just acting like a regular person?

25 A. Yes.

1 Q. And she gave you the Rohypnol or sold you the Rohypnol?

2 A. Yes.

3 Q. Charged you five dollars for it?

4 A. Yes.

5 Q. And she didn't ask any other questions, did she?

6 A. No.

7 MR. GUNN: Your Honor, if I could mark an exhibit, if
8 I could get an exhibit tag, as 603.

9 THE COURT: Okay.

10 (Defendant's Exhibit 603 was marked)

11 MR. GUNN: If I could approach, Your Honor.

12 THE COURT: Yes.

13 MR. GUNN: Here is an original with an original
14 exhibit tag and an extra copy for the Court.

15 Q. Would you look at Defense Exhibit 603, Mr. Carbone.

16 A. Okay.

17 Q. That's a copy of the Rohypnol box that you bought; correct?

18 A. Yes, it is.

19 MR. GUNN: No further questions, Your Honor.

20 THE COURT: Would you like that in evidence, sir?
21 Mr. Gunn?

22 MR. GUNN: Actually, Your Honor, could I consult with
23 counsel for a minute?

24 (Mr. Brown and Mr. Gunn confer off the record)

25 MR. GUNN: I would offer it into evidence, Your Honor.

1 603.

2 THE COURT: Admitted.

3 (Defendant's Exhibit 603 was received)

4 CROSS-EXAMINATION

5 BY MR. LULEJIAN:

6 Q. Special Agent Carbone, was this the first pharmacy you
7 attempted to buy Rohypnol at?

8 A. No.

9 Q. How many did you try to buy it at before?

10 A. There was one pharmacy previously.

11 Q. Would they sell it to you?

12 A. No, they would not.

13 Q. Did they say why?

14 MR. GUNN: Objection. Hearsay, Your Honor.

15 THE COURT: Sustained.

16 MR. LULEJIAN: No further questions.

17 THE COURT: Anything else, Mr. Gunn?

18 MR. GUNN: No, Your Honor.

19 THE COURT: Thank you, sir, you're excused.

20 Does the Defense have another witness?

21 MR. GUNN: Yes, Your Honor. We would call Richard
22 Williams. If I could send Mr. Brown out to get him?

23 THE COURT: Yes.

24 THE CLERK: Please stand next to the court reporter
25 and raise your right hand to be sworn.

Richard Terrell Williams, Defendant's witness, was sworn

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Richard Terrell Williams,
W-I-L-L-I-A-M-S.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. GUNN:

Q. Mr. Williams, do you know Michael Pepe?

A. Yes, sir, I do.

Q. How do you know him?

A. I am married to his sister, and I have known him since we were in high school together.

Q. Where do you live, by the way?

A. In Port Hueneme, California.

Q. Did Mr. Pepe used to live there before he went to Cambodia?

A. Not in Port Hueneme he didn't. He lived in Oxnard, the city next to it.

Q. And how are you employed?

A. I'm a deputy probation officer for the County of Ventura.

Q. How long have you been doing that?

A. Seventeen years. I just recently retired. I'm working part time now.

Q. Now, was there a time sometime in the past few years -- well, were you aware that Mr. Pepe was living in Cambodia for a

1 period of time?

2 A. Yes, sir.

3 Q. And was there a time in the last few years when you and
4 your wife went to visit had him?

5 A. Yes, sir.

6 Q. And what was the purpose of that visit?

7 A. Just to visit -- to visit Mike while he was teaching in
8 Cambodia.

9 MR. GUNN: Your Honor, could I have Government
10 Exhibit 1124 placed before Mr. Williams.

11 THE COURT: All right. I think the Government has the
12 exhibits.

13 MR. GUNN: It's a photograph. Is it in the notebooks
14 up there, Your Honor?

15 THE COURT: I don't know.

16 MR. GUNN: Actually, Your Honor, I think it's in
17 evidence. Perhaps I could just publish my copy.

18 THE COURT: Why don't you do that.

19 BY MR. GUNN:

20 Q. Mr. Williams, can you see Government Exhibit 1124 on the
21 screen there?

22 A. Yes, sir, I do.

23 Q. Do you see a rubber banded package of American bills that
24 at least on the outside has a \$1 bill?

25 A. Yes, sir.

1 Q. Did you have any conversation with Mr. Pepe about \$1 bills
2 in Cambodia before you took your trip there?

3 A. Yes, sir.

4 Q. And would you describe that? What did he tell you?
5 What -- describe that conversation.

6 A. Well, Cambodia is kind of a rural country and they don't
7 have a lot of ATM's and -- or banks, except in the major cities,
8 and he suggested that we bring small amounts of money, dollar
9 bills, \$5 bills, \$10 bills, and -- because there is no ATM's or
10 anything. So when we left the United States, I think I had like
11 six or \$700 --

12 THE COURT: Sir, the question is the conversation that
13 you had.

14 THE WITNESS: I guess I covered it then. I'm sorry,
15 Your Honor.

16 THE COURT: That's okay.

17 BY MR. GUNN:

18 Q. And what, if anything, did he tell you specifically about
19 \$1 bills?

20 MR. LULEJIAN: Objection. Self-serving hearsay.

21 THE COURT: Overruled.

22 THE WITNESS: The amount. He said to bring a couple
23 hundred dollars.

24 BY MR. GUNN:

25 Q. In \$1 bills?

1 A. In \$1 bills.

2 Q. Why did he say \$1 bills specifically? Was there a purpose
3 as to \$1 bills versus \$5 bills or \$10 bills?

4 A. Just for the -- the cost of living there is quite a bit
5 cheaper so you don't need large amounts of money, and there's
6 beggars, bell hops, cap drivers. It's a cash society more than
7 a credit card society like we are.

8 Q. Did he describe the types of people you just described are
9 people you would give \$1 bills to?

10 A. That's correct.

11 Q. And when you got to Cambodia, did you find yourself doing
12 that?

13 A. Yes, sir.

14 Q. Would you describe that.

15 A. It seems like almost anywhere you went outside of Mike's
16 compound, for lack of a better word, where he lived, you seemed
17 to be inundated by beggars everywhere.

18 Q. And shoe shine boys?

19 A. Shoe shine boys.

20 Q. What would you give them?

21 A. Well, normally you would give them a dollar.

22 Q. Did you see Mr. Pepe himself doing anything with \$1 bills
23 while you were there visiting him?

24 A. Yes.

25 Q. What was that?

1 A. Well, when we were in Phnom Penh, almost every morning we
2 went to a restaurant and there was a Vietnamese -- excuse me --
3 Cambodian girl that was a shoe shine girl. She always shined
4 his shoes and he always gave her a dollar.

5 Q. Did you see him use dollar bills on other occasions as
6 well?

7 A. Yes, sir.

8 Q. What were some of those?

9 A. Same thing when we would go shopping at the market or at
10 the stores, the people would come up and he would have them do
11 something for a dollar, like wash the car or wash the windows or
12 carry their bags or whatever.

13 Q. Now I would like to move to another topic.

14 Did Mr. Pepe ever send gifts from Cambodia to members
15 of your family and/or his family that you know of?

16 A. Yes, sir.

17 Q. And did those gifts ever include silk ropes?

18 A. Yes, sir.

19 Q. Have you brought any of those to court with you as examples
20 of what he'd send?

21 A. Yes, I did.

22 Q. Do you have them with you there on the witness stand?

23 A. Yes, I do, in my bag.

24 MR. GUNN: Your Honor, if I could have Mr. Williams
25 get out two items.

1 Q. Two is what you brought?

2 THE COURT: You may do that.

3 BY MR. GUNN:

4 Q. Holding -- you have two items there; correct?

5 A. Correct.

6 Q. Would you -- let me ask you about them one at a time.

7 Would you first hold up the darker one and tell us
8 what that is.

9 A. This is a rope that Michael sent me I think it's been about
10 three years ago.

11 Q. What's it made out of?

12 A. It's silk.

13 Q. And he sent you that while he was in Cambodia?

14 A. Yes.

15 Q. That was a gift of some sort?

16 A. Yes.

17 Q. For when?

18 A. He just arbitrarily sends stuff.

19 Q. Okay.

20 A. Through the mail.

21 MR. GUNN: Your Honor --

22 Q. And what is the second item?

23 A. This is a -- it's a child's -- girl's rope also silk that
24 he sent to my oldest granddaughter.

25 MR. GUNN: Your Honor, I would offer these two items

1 into evidence. I would propose they be marked as 400 and 401.
2 Defense Exhibits 400 and 401.

3 THE COURT: I don't know that he is ever going to get
4 them back. Is he willing to give them up?

5 MR. GUNN: He actually is. Perhaps when the case is
6 over we can work something out. But he is willing to give them
7 up, if necessary, and certainly for now.

8 THE COURT: Mr. Lulejian?

9 MR. LULEJIAN: No objection.

10 THE COURT: All right. Thank you. Those will come
11 in.

12 (Defendant's Exhibits 400 and 401 were received)

13 MR. GUNN: May I consult with co-counsel for a moment,
14 Your Honor?

15 THE COURT: Yes.

16 (Mr. Gunn and Mr. Brown confer off the record)

17 MR. GUNN: No further questions, Your Honor.

18 THE COURT: Cross-examination?

19 MR. LULEJIAN: Yes, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. LULEJIAN:

22 Q. Good morning, sir.

23 A. Good morning.

24 Q. You testified a moment ago that you are Mr. Pepe's
25 brother-in-law?

1 A. That's correct.

2 Q. And you testified that you also went to Cambodia for a
3 visit?

4 A. That's correct.

5 Q. Was your trip limited to Phnom Penh or did you go outside
6 of Phnom Penh?

7 A. We started in Bangkok, went to Phnom Penh, we went to Siem
8 Reap and we went to quite a few communities around the
9 Phnom Penh area.

10 Q. On your trip, did the defendant accompany you each step of
11 the way?

12 A. Every minute, no. Most of the major attractions, yes.

13 Q. And when you were in Phnom Penh, did you stay with the
14 defendant?

15 A. Yes, I did.

16 Q. You stayed at his house?

17 A. That's correct.

18 Q. Which room did you sleep in?

19 A. The upstairs right by the outside balcony.

20 Q. That's the one near the master bedroom?

21 A. Correct. There is a large hallway that separates the two,
22 but . . .

23 Q. Was your wife with you on that trip?

24 A. Yes, she was.

25 Q. Her name is Elaine?

1 A. That's correct.

2 Q. Was anybody else there besides you, Elaine and the
3 defendant?

4 MR. GUNN: Objection, Your Honor. Ambiguous as to
5 "there."

6 THE COURT: Overruled. You can answer, if you
7 understand that, sir.

8 THE WITNESS: I don't -- you mean living in the house
9 that we saw there?

10 BY MR. LULEJIAN:

11 Q. Let's start with this. Was a woman by the name of Chanry
12 with you?

13 A. I don't know anybody by the name of Chanry.

14 Q. Anybody by the name of Nary?

15 A. Yes.

16 Q. Okay.

17 Who is Nary?

18 A. She is Michael's wife.

19 Q. And was she with you the whole time while you were staying
20 in Phnom Penh?

21 MR. GUNN: I object. This is beyond the scope.

22 THE COURT: Overruled.

23 THE WITNESS: Except for the major -- all the major
24 attractions she was, yes.

25 BY MR. LULEJIAN:

1 Q. And what room does she sleep in?

2 A. I believe she had her own room downstairs.

3 Q. What were the dates of your trip?

4 A. Pardon me?

5 Q. What was the date of your trip?

6 A. It was in July 2004. I don't have the exact dates with me.

7 Q. Now, when you were at the defendant's house, did you see
8 any children there?

9 MR. GUNN: Objection. Beyond the scope, Your Honor.

10 THE COURT: It is beyond the scope, Mr. Lulejian.

11 MR. LULEJIAN: All right.

12 Q. Did you -- since returning from your trip, you said that
13 you received gifts from the defendant; is that correct?

14 A. Correct.

15 Q. You have also received letters, haven't you?

16 A. I personally?

17 MR. GUNN: Objection. Beyond the scope, Your Honor.

18 THE COURT: It sounds like it's beyond the scope,
19 Mr. Lulejian.

20 MR. LULEJIAN: One moment, please, Your Honor.

21 (Mr. Lulejian and Ms. Donahue confer off the record.)

22 BY MR. LULEJIAN:

23 Q. I am going to show you what has been marked as Government's
24 Exhibit No. 1031. I think it's been admitted.

25 Do you recognize the woman in that photograph, sir?

1 A. No, I don't.

2 Q. You didn't meet her?

3 A. I don't recognize her.

4 Q. Have you been back to Cambodia since?

5 A. No.

6 MR. LULEJIAN: I have no further questions then.

7 THE COURT: Redirect?

8 MR. GUNN: No, Your Honor.

9 THE COURT: Thank you, sir. You're excused.

10 THE WITNESS: Thank you, Your Honor. Do you want me
11 to leave these here?

12 THE COURT: Please.

13 Do you have another witness, Mr. Gunn?

14 MR. GUNN: Yes, Your Honor, our next witness is Mao
15 Chann Thorn. If the interpreter could step out and get him
16 since he speaks some English but mostly Cambodia. He will
17 testify in Cambodian.

18 While he is coming in, Your Honor, may I step over and
19 get an exhibit?

20 THE COURT: You may. Step forward, please --

21 MR. GUNN: I'm sorry, Your Honor. That's not the
22 witness.

23 THE COURT: That's not your witness? Okay.

24 (Whereupon, interpreter went out in the hall to get the
25 witness.)

Mao Chann Thorn, Defendant's witness, was sworn

THE CLERK: Please take the witness stand.

THE COURT: Our interpreter is still under oath.

THE CLERK: Please state your full name and spell your full name for the record, please.

THE WITNESS: My name is Mao Chann Thorn.

THE COURT: Interpreter spelling, please.

THE WITNESS: M-A-O, C-H-A double N, T-H-O-R-N. Mao Chann Thorn.

DIRECT EXAMINATION

BY MR. GUNN:

Q. Mr. Mao, what country do you live in?

THE INTERPRETER: Pardon me, Counsel?

BY MR. GUNN:

Q. What country do you live in?

A. Cambodia.

Q. Were you born in Cambodia?

A. Yes.

Q. What part of Cambodia are you living in now?

A. Present time in Phnom Penh.

Q. And how are you presently employed?

A. I am working for the company named Bodel.

Q. What is your position with them?

A. Administrations.

Q. How were you employed in 2005 and 2006?

1 A. 2005 to 2006, I was a teacher teaching in English class.

2 Q. And where did you teach?

3 A. Newton Thilay School.

4 Q. And what subject did you teach?

5 A. English.

6 Q. What ages children did you teach?

7 A. From three years old to 18 years old.

8 Q. And that was all at the same school? At Newton Thilay
9 school?

10 A. Yes.

11 Q. So is it correct to assume you speak some English?

12 A. Yes. Some.

13 Q. Do you speak it well enough to teach it to other
14 Cambodians?

15 A. Yes.

16 Q. Would you explain to the jury why you are using an
17 interpreter here in court.

18 A. I have to say that English is not my mother tongue. If I
19 speak in English, I might not have a full understanding or a
20 full explanation that I want to.

21 Q. Now, do you know Michael Pepe?

22 A. Yes.

23 Q. Do you see him here in court today?

24 A. Yes.

25 Q. Would you point him out for us?

1 A. (Indicating).

2 Q. Is he -- you are pointing at a table with one man farther
3 away from me and one man closer to me. Which one, just for the
4 record?

5 A. In the black suit.

6 THE COURT: Indicating the defendant, Mr. Pepe.

7 MR. GUNN: Thank you, Your Honor.

8 Q. How did you meet Mr. Pepe, Mr. Mao?

9 A. At that time, he came to visit my school.

10 Q. And when was that?

11 A. Mid 2005.

12 MR. GUNN: Your Honor, if I could have Defense
13 Exhibit 366 placed in front of Mr. Mao. It's already in
14 evidence. I can publish it actually if that's easier for the
15 clerk.

16 THE COURT: Thank you. That's much easier.

17 BY MR. GUNN:

18 Q. Mr. Mao, do you recognize -- do you see three girls here
19 with little red ties on?

20 A. Yes. I know three of them.

21 Q. Before we get into that, they also have white shirts and
22 blue skirts; correct?

23 A. I can't tell exactly the color of the skirt.

24 Q. All right.

25 But -- what you see there, is that the school uniform

1 for your school?

2 A. Yes. White shirt, red tie, and I can't tell you exactly,
3 blue or black skirt in the picture.

4 Q. Do you recognize the girls in the photograph?

5 A. Yes. I know all three of them.

6 Q. And who are they? What are their names? Do you remember
7 their names?

8 A. The tall one named L.K.xxx. The one in the middle is
9 S.R.xxx. And the other one is S.S.xxx.

10 Q. How do you know them? What do you know them from?

11 Actually let me ask you another question first.

12 Do you know where Mr. Pepe's house, the house he was
13 living in in Cambodia, is?

14 A. Yes. He lived next door to the school.

15 Q. Now going back to the girls, how do you know the girls in
16 Defense Exhibit 266?

17 A. Because at the time Mr. Pepe send all three of them to my
18 school.

19 Q. How did you meet them the first time? Was it at the
20 school?

21 A. First he went there by himself. And then he took them
22 there.

23 Q. Did you teach L.K.xxx, S.R.xxx and S.S.xxx at school?

24 A. No. In school we have another teacher. Taught them.

25 Q. Did you have any contact with the three girls outside

1 school?

2 A. Yes.

3 Q. And what -- where was that, first of all?

4 A. At Michael's home.

5 Q. And what contact -- for what purpose did you have contact
6 with them at Michael's home?

7 A. When they first start school, they are not too fluent, so
8 they need some tutor at home.

9 Q. When you saw fluent, fluent in what language?

10 A. English.

11 Q. They needed some tutoring in English at home? Is that what
12 you're saying?

13 A. Yes. Because that was the request from their teacher.

14 Q. And so what did you then do?

15 A. At that time, I went there to teach them myself.

16 Q. When you say you went there, you mean you went to the home,
17 to Michael's home where they were staying?

18 A. Yes.

19 Q. How many times a week did you go to the home to tutor the
20 girls?

21 A. Three times.

22 Q. For how many months did you do that?

23 A. I don't remember exactly, but I know it was before they
24 arrest Michael.

25 Q. Was it for a period of just one or two weeks or for a

1 period of like two or three months?

2 A. I think it's about six week. But during that six weeks,
3 it's spread out within six month period.

4 Q. How did the girls act when you were over at the house
5 tutoring them?

6 A. They very happy. They felt like they acting like they were
7 in school.

8 Q. Did they ever act unhappy or upset in any way that you
9 recall?

10 A. No.

11 Q. Did you have ever eat at the house when you were there
12 tutoring?

13 A. Yes.

14 Q. And did Mr. Pepe sometimes eat at the same time?

15 A. Yes.

16 Q. How did the girls act toward Mr. Pepe?

17 A. They ate all together. The servant brought out some food
18 just like everybody else for him -- for Mr. Pepe.

19 Q. Did the girls act like they were afraid of Mr. Pepe?

20 A. No. They behave and act treating Mr. Pepe like a father.

21 Q. Did they act like he made them unhappy in any way?

22 A. No. I think they were just happy to be there.

23 Q. Did they act like they didn't want to be around Mr. Pepe?

24 A. No. I saw them ran over to hug Mr. Pepe.

25 MR. GUNN: Your Honor, could I speak with co-counsel

1 for one minute?

2 THE COURT: You may.

3 (Mr. Brown and Mr. Gunn confer off the record).

4 MR. GUNN: No further questions, Your Honor.

5 THE COURT: Cross-examination?

6 MS. DONAHUE: Thank you, Your Honor.

7 THE WITNESS: May I have some water, please?

8 THE COURT: Steve, give him some water.

9 CROSS-EXAMINATION

10 BY MS. DONAHUE:

11 Q. Good afternoon, Mr. Mao.

12 A. Good afternoon.

13 Q. Now, you do not work as a teacher any more; is that right?

14 A. That's correct.

15 Q. Back in 2005 and 2006, you worked as a teacher at the
16 Newton Thilay school in Phnom Penh; is that right?

17 A. Yes.

18 Q. Did the school pay you a salary?

19 A. Yes.

20 Q. How much did the school pay you to teach?

21 A. I think it was \$300 a month. A month.

22 Q. You were paid \$300 every month?

23 A. Yes.

24 Q. What classes did you teach?

25 A. I was vice-principal.

1 Q. You were the vice-principal of the school?

2 A. I was just kind of like in charge to some part of it.

3 Q. So you were like the No. 2 person in charge of the whole
4 school; is that right?

5 A. Yes.

6 Q. And did you teach the children in addition to being the
7 No. 2 person in charge of the school?

8 A. Yes.

9 Q. But you did not teach L.K.xxx, S.S.xxx and S.R.xxx at the
10 school; is that right?

11 A. I was just in charge teachers.

12 Q. You were in charge of their teachers; is that right?

13 A. Yes.

14 Q. And you met Mr. Pepe, the defendant in this case, in 2005;
15 is that right?

16 A. Yes.

17 Q. And you met him at the Newton Thilay school; right?

18 A. Yes.

19 Q. He had come to the school; is that right?

20 A. Yes.

21 Q. What are the age -- what is the age range of the children
22 at Newton Thilay school when you were there?

23 A. Three years old for the kindergarten to six years old.
24 Kindergarten. And then from six to 18.

25 Q. And the -- Mr. Pepe, the defendant, hired you to tutor

1 children who lived at his house; is that right?

2 A. Yes.

3 Q. And he paid you \$35 every month to tutor the children; is
4 that right?

5 A. I think he paid me weekly.

6 Q. Mr. Pepe paid you every week; is that right?

7 A. Yes.

8 Q. How much did he pay you every week?

9 A. Well, you can divide it.

10 Q. But it worked out to be about \$35 a month; is that right?

11 A. We just kind of add up each hours. He paid \$3.

12 Q. Basically he paid you \$3 an hour; is that right?

13 A. Three point five.

14 Q. \$3.50 an hour?

15 A. Yes.

16 Q. Would he pay you in dollars or in Cambodian riel?

17 A. Sometimes dollars, sometimes in riel.

18 Q. Now, you would go over to Mr. Pepe's house, which was right
19 around the corner from the school; is that right?

20 A. Yes. I walked there.

21 Q. And you were there for an hour, from 1:00 until 2:00 in the
22 afternoon; is that right?

23 A. Yes. Between that.

24 Q. This was for a period of about six weeks; is that right?

25 A. Yes.

1 Q. And that six weeks was not every week consecutively; right?

2 A. No.

3 Q. Some weeks you might not -- you wouldn't go to Mr. Pepe's
4 house at all; is that right?

5 A. That is correct. Sometimes I postpone it.

6 Q. And this was -- the total time in which you did the
7 tutoring was between June and December of 2005; isn't that
8 right?

9 A. Yes.

10 Q. When you were at Mr. Pepe's house, did you ever go
11 upstairs?

12 A. Yes.

13 Q. What room did you go into?

14 A. His work -- his office.

15 Q. You went into his office; is that right?

16 A. Yes.

17 Q. Did you ever go into any of the bedrooms?

18 A. No.

19 Q. When you were at Mr. Pepe's house, did Mr. Pepe ever tell
20 you that the girls would give him a massage at 12:00 and then
21 you would come at 1:00?

22 A. Can you please repeat the question?

23 Q. Did Mr. Pepe ever tell you that he had L.K.xxx, S.S.xxx and
24 S.R.xxx give him a massage right before you came over?

25 A. No.

1 MS. DONAHUE: I have no further questions, sir.

2 THE COURT: Redirect?

3 MR. GUNN: No redirect, Your Honor.

4 THE COURT: Thank you, sir. You're excused.

5 Any other witnesses?

6 MR. GUNN: Our next witness would be to play the
7 deposition of Ly Kim Eng.

8 THE COURT: Why don't we take a break.

9 Ladies and gentlemen, don't talk about the case or
10 form or express any opinions about the case until it's finally
11 submitted to you. We will take a 15 minute break.

12 (Recess taken)

13 (Jury Out)

14 THE COURT: Just to clarify, on the Exhibit 126 that I
15 indicated I would admit, I don't think there is any due process
16 concerns, Mr. Gunn. You have brought witnesses over here at
17 government expense that I ordered. You could have brought a
18 witness to authenticate this document. You have taken
19 depositions out of the country that I authorized.

20 So it's being admitted not substantively, but only for
21 the fact that Mr. -- it was in Mr. Pepe's home and for his state
22 of mind.

23 MS. DONAHUE: Your Honor, I raised one potential
24 scheduling issue with the Defense. It probably won't be an
25 issue but the Defense is calling Dr. Michael Maloney to testify,

1 I believe, to his opinion that the interviews conducted of the
2 victims were impermissibly suggestive.

3 Dr. Maloney, according to the Defense, is not
4 available Thursday so will be testifying here Friday morning.

5 I have given the Defense notice that we have an expert
6 to testify in rebuttal to rebut on exactly that topic.

7 She is a professor who is required to attend a
8 graduation ceremony in San Diego on Friday morning. The Defense
9 is not sure that they will rest or that we will be to the
10 rebuttal case or what time Maloney will end, so it's a little
11 bit difficult to predict. But in the event that we get to the
12 Government's rebuttal case on Friday morning, would it be
13 possible to put it over until Tuesday? And I realize --

14 THE COURT: That becomes very difficult. First of
15 all, I don't know why the witness can't be here tomorrow.

16 MS. DONAHUE: That's their witness.

17 THE COURT: I understand. That's the one I'm talking
18 about. We have jurors driving, as you know, great distances,
19 and it's just unfair to have them driving for an hour or 15
20 minutes or whatever this testimony is going to take. So I'll --

21 MS. DONAHUE: If -- I will press her to be here if it
22 looks like it's actually going to work itself out that she would
23 testify on Friday. At this point we may be playing depositions.

24 THE COURT: What are we doing tomorrow?

25 MR. GUNN: Tomorrow we'll finish this deposition. If

1 we're lucky, we will play the Koeung Lang deposition. We will
2 finish up our other witnesses who are relatively short. That
3 would be tomorrow. Dr. Maloney was not available tomorrow.
4 That's why I raised that with the Court yesterday morning.

5 THE COURT: You raised it with me. I didn't say it
6 was okay. We can't just leave these gaps.

7 MR. GUNN: There is -- if I call our dermatologist, he
8 would be tomorrow. I am going to make that decision after
9 talking to him late this afternoon or this evening.

10 THE COURT: How much time is your case going to take
11 tomorrow?

12 MR. GUNN: Well, this deposition is, I think total,
13 going to be over three hours. The Koeung Lang deposition I
14 believe will be -- my recollection in terms of the time it took,
15 I mean I -- obviously not building in the redactions but we were
16 there from sometime between 8:00 or 9:00 until 2:00. So my
17 guess is both these depositions are in the area of three hours.
18 That's my recollection.

19 So I think there is actually a good -- if we can get
20 the Koeung Lang deposition, I think there is a good chance we
21 will fill up tomorrow without Dr. Maloney and I don't know --

22 THE COURT: You need to get your witness here,
23 Ms. Donahue. Try subpoena. Try subpoena.

24 MS. DONAHUE: It usually works.

25 THE COURT: Send a marshal.

1 Are we ready?

2 MR. GUNN: I believe so, Your Honor. Maybe I can
3 check with Mr. Lulejian on whether he . . .

4 THE COURT: All set?

5 MR. GUNN: Maybe we should make sure Mr. Brown
6 acclimates to the computer.

7 (Jury In)

8 THE COURT: All right. Everyone is back.

9 Mr. Brown, are you in charge now?

10 MR. BROWN: Just the mouse, Your Honor.

11 THE COURT: Whatever you can handle, that's okay. Go
12 ahead.

13 MR. BROWN: Thank you.

14 (Whereupon, the video was played for the jury).

15 MR. BROWN: I don't think I am doing a very good job
16 with the mouse, Your Honor.

17 THE COURT: We may have to call a replacement.

18 (Whereupon, the video was played for the jury).

19 MR. GUNN: Your Honor, may I publish?

20 (Photograph published for the jury).

21 THE COURT: Thank you.

22 (Whereupon, the video was played for the jury).

23 MR. GUNN: Your Honor, for the record I have inserted
24 Defense Exhibit 119 into the record and this is Pict 0016 on the
25 screen which we will flip over to.

1 THE COURT: Okay.

2 MR. GUNN: Actually, Your Honor, I need to -- there we
3 go.

4 (Photograph published for the jury).

5 THE COURT: Okay. Thank you.

6 (Whereupon, the video was played for the jury).

7 MR. GUNN: I will publish that, Your Honor.

8 (Photograph published for the jury).

9 THE COURT: Thank you.

10 (Whereupon, the video was played for the jury).

11 MR. GUNN: Your Honor, may I publish?

12 THE COURT: You may.

13 (Photograph published for the jury).

14 (Whereupon, the video was played for the jury).

15 MR. GUNN: Your Honor, may I publish that?

16 THE COURT: Yes.

17 (Photograph published for the jury).

18 (Whereupon, the video was played for the jury).

19 MR. GUNN: May I publish that, Your Honor?

20 THE COURT: You may.

21 (Photograph published for the jury).

22 (Whereupon, the video was played for the jury).

23 MR. GUNN: May I publish that, Your Honor?

24 THE COURT: You may.

25 (Photograph published for the jury).

(Whereupon, the video was played for the jury).

MR. GUNN: Your Honor, may I publish that series?

THE COURT: You may.

MR. GUNN: For the record, Your Honor, this is 64, 65,
66, 67, 68, 69, 70, 71, 72.

(Photographs published for the jury).

(Whereupon, the video was played for the jury).

MR. LULEJIAN: Your Honor, may I publish 1001, please?

THE COURT: You may.

(Photograph published for the jury).

Whereupon, the video was played for the jury).

MR. LULEJIAN: May I publish 1020, Your Honor?

THE COURT: You may.

(Photograph published for the jury).

(Whereupon, the video was played for the jury).

MR. LULEJIAN: May the Government publish 1002,
Your Honor?

THE COURT: You may.

(Photograph published for the jury).

(Whereupon, the video was played for the jury).

MR. LULEJIAN: Your Honor, this may be a good place
for us to stop.

THE COURT: Ladies and gentlemen, don't talk about the
case or form or express any opinions about the case until it's
finally submitted to you. You ordered to return tomorrow at

1 8:00 a.m. and you are ordered to have a good evening.

2 (Jury Out)

3 THE COURT: All right. Ms. Donahue will provide a
4 complete copy of the verdict form and counsel will try to take a
5 look at the pages that I've tabbed. I made a couple of other
6 minor changes that I didn't note. They're all grammatical. So
7 I changed a few "which's" to "that's" and added "apostrophe S"
8 after "witness's" because that's the way I think it should be.
9 But obviously sooner or later we are going to need to talk about
10 these and it sounds more like sooner.

11 Ms. Donahue, you are going to find out about getting
12 your other witness here on Friday?

13 MS. DONAHUE: Yes. I am going to do that this
14 afternoon and will tell her essentially that she needs to be
15 here Friday morning. And I anticipate perhaps Special Agent
16 Phillips for a couple very short rebuttal points,
17 Dr. Dallenberg, and that's it for rebuttal.

18 THE COURT: Who is Dr. Dr. Dallenberg?

19 MS. DONAHUE: That's the expert to rebut what I
20 anticipate Dr. Maloney will say.

21 THE COURT: I assume that will be relatively short.
22 We will probably be doing instructions and closing on Friday as
23 well.

24 MS. DONAHUE: Probably. I'm not sure -- I don't have
25 a good sense for how long the other deposition redacted is, but

1 probably.

2 THE COURT: Okay. All right.

3 MR. GUNN: My guess is they are both probably about
4 three to four hours total. Each. Each one individually.

5 THE COURT: We are finishing up this one and there is
6 one more.

7 MR. GUNN: And this one I'm pretty sure has one and a
8 half hours to two hours left at least. And the other one is
9 probably comparable total length to this unless the redactions
10 are real different. I don't recall that they are but I haven't
11 compared them.

12 THE COURT: All right. We will see you tomorrow at
13 7:45.

14 (Proceedings adjourned at 2:02 p.m.)

15 CERTIFICATE

16
17 I hereby certify that pursuant to Section 753, Title 18,
18 United States Code, the foregoing is a true and correct
19 transcript of the stenographically reported proceedings held in
20 the above-entitled matter and that the transcript page format is
21 in conformance with the regulations of the Judicial Conference
22 of the United States.

23 _____
24 Pamela A. Seijas, CSR No. 3593
25 Official Reporter

Date

Certificate of Service

I hereby certify that on May 28, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

By: /s/ James H. Locklin
JAMES H. LOCKLIN
Deputy Federal Public Defender

No. 14-50095

**In the United States Court of Appeals
for the Ninth Circuit**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MICHAEL JOSEPH PEPE,
Defendant-Appellant.

On Appeal from the United States District Court
for the Central District of California
The Honorable Dale S. Fischer, Presiding
No. CR-07-00168-DSF

Appellant's Excerpts of Record
[Volume 8 of 12]

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[†] Although this document and the two orders that follow were not filed until after the judgment and notice of appeal were filed, they are placed here in the excerpts because they relate to the trial proceedings.

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE DALE S. FISCHER, JUDGE PRESIDING

United States of America,)

Plaintiff,)

)

vs.)

Case No.

)

CR 07-168 (A) -DSF

Michael Joseph Pepe,)

Defendant.)

)

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS

Day 9

Los Angeles, California

Thursday, May 22, 2008

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Official Reporter
Roybal Federal Building
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20 CAMBODIAN CHANDRA HAC

21 INTERPRETER:
22

23 ALSO PRESENT: ATTACHE GARY PHILLIPS
24 ICE SPECIAL AGENT EDDY WANG
25

1 day today.

2 MR. GUNN: All right. So the Government might want to
3 let their expert know that that is a possibility for their
4 expert.

5 THE COURT: Let's see where we are.

6 MS. DONAHUE: Thank you, Your Honor.

7 MR. LULEJIAN: Your Honor, I apologize. I have no
8 excuse. I was well aware of the Court's order. Other than to
9 say I am sorry. I apologize.

10 THE COURT: I would have started without you. I
11 wasn't going to wait.

12 MR. LULEJIAN: I have no doubt about that, Your Honor.

13 MS. DONAHUE: We know.

14 (Jury In)

15 THE COURT: Good morning. Everyone is present. We
16 are going to continue with the deposition testimony.

17 Agent?

18 (Whereupon, the video was played for the jury)

19 MR. GUNN: Your Honor, this has already been played.

20 (Video stopped)

21 MR. GUNN: I would be happy to have the Defense
22 portion played again, Your Honor.

23 THE COURT: No, thank you.

24 MS. DONAHUE: Not a chance.

25 (Whereupon, the video was played for the jury)

1 MS. DONAHUE: Your Honor, I think the jury has seen
2 both the exhibits a million times. I don't think we need to
3 pause.

4 THE COURT: Fine.

5 (Whereupon, the video was played for the jury)

6 MS. DONAHUE: Your Honor, may I publish that briefly?

7 THE COURT: You may.

8 (Photograph published for the jury)

9 MS. DONAHUE: Thank you.

10 (Whereupon, the video was played for the jury)

11 MS. DONAHUE: May I publish this one briefly,
12 Your Honor?

13 THE COURT: You may.

14 (Photograph published for the jury.)

15 (Whereupon, the video was played for the jury)

16 MS. DONAHUE: May I publish that, Your Honor?

17 THE COURT: You may.

18 MS. DONAHUE: It's already in evidence.

19 (Photograph published for the jury)

20 (Whereupon, the video was played for the jury)

21 MS. DONAHUE: May I publish that, Your Honor?

22 THE COURT: You may.

23 (Photograph published for the jury)

24 (Whereupon, the video was played for the jury)

25 MS. DONAHUE: Your Honor, may I publish 1013 as well?

1 THE COURT: You may.

2 (Photograph published for the jury)

3 (Whereupon, the video was played for the jury)

4 THE COURT: Is this a good place to break?

5 MS. DONAHUE: Yes, Your Honor.

6 THE COURT: Ladies and gentlemen, don't talk about the
7 case or form or express any opinions about the case until its
8 finally submitted to you. We will take a 15 minute break.

9 (Recess taken)

10 (Jury In)

11 THE COURT: All right. Everyone is back.

12 You can continue.

13 (Whereupon, the video was played for the jury)

14 MR. GUNN: Your Honor, may I approach the clerk about
15 a witness related matter?

16 (Whereupon, Mr. Gunn and the clerk confer off the record)

17 MR. GUNN: Thank you.

18 (Whereupon, the video was played for the jury)

19 MS. DONAHUE: Your Honor, this is an exhibit.
20 Actually it's 2007 which is in evidence. Can you publish just
21 that portion?

22 MR. GUNN: Actually, Your Honor, I think this is an
23 exhibit that should not be published, based on what I was
24 raising earlier.

25 THE COURT: Is it in evidence?

1 MS. DONAHUE: Yes.

2 THE COURT: Was it shown to the witness?

3 MS. DONAHUE: Yes.

4 MR. GUNN: Yes, but the witness didn't --

5 THE COURT: You can publish it.

6 MR. GUNN: Okay.

7 (Photograph published for the jury)

8 MR. GUNN: My understanding is the witness ends up
9 saying she wasn't aware of it.

10 THE COURT: Yes. I think that is relevant
11 information.

12 All right. Thank you, Ms. Donahue.

13 (Whereupon, the video was played for the jury)

14 MS. DONAHUE: This is previously admitted.

15 (Photograph published for the jury)

16 (Whereupon, the video was played for the jury)

17 MS. DONAHUE: May I publish? This is also in
18 evidence, Your Honor.

19 THE COURT: You may.

20 (Photograph published for the jury)

21 (Whereupon, the video was played for the jury)

22 MS. DONAHUE: May I publish, Your Honor?

23 THE COURT: Yes.

24 (Photograph published for the jury)

25 (Whereupon, the video was played for the jury)

1 MS. DONAHUE: May I publish, Your Honor?

2 THE COURT: Yes.

3 (Photograph published for the jury)

4 (Whereupon, the video was played for the jury)

5 THE COURT: I don't know if that's it but it's time to
6 take a break.

7 MR. GUNN: Actually, Your Honor, there is five minutes
8 more.

9 THE COURT: Let's go ahead and finish the five
10 minutes.

11 (Whereupon, the video was played for the jury)

12 THE COURT: Is that it?

13 All right. Ladies and gentlemen, don't talk about the
14 case or form or express any opinions about the case until it's
15 finally submitted to you. We will take a 15 minute break.

16 (Recess taken)

17 THE COURT: Next time I shall insist on transcripts
18 and make and sustain my own 403 objections. This is really,
19 really long. It's probably too late to do anything about it
20 with the last one, but --

21 MS. DONAHUE: We were thinking -- Mr. Gunn said he is
22 going to put witnesses on for the rest of today.

23 THE COURT: Okay.

24 MS. DONAHUE: So before the -- before playing the
25 Koeung Lang depo, we may go through with the eye towards any

1 portions we can stip. They are in chapters.

2 THE COURT: I don't why it's so choppy.

3 MS. DONAHUE: The looping sometimes worked and
4 sometimes didn't and so that's why we just put it in segments.
5 So we -- sometimes it loops beautifully, and for reasons that no
6 one has been able to explain to me, sometimes it doesn't loop
7 beautifully and so we decided to err on the side of --

8 MR. GUNN: The next one does loop directly from
9 segment to segment.

10 THE COURT: That will help.

11 MS. DONAHUE: I think so. Yes. Apparently we're
12 trying.

13 MR. GUNN: Your Honor, I have two evidentiary issues
14 to raise with the Court that will be quick.

15 THE COURT: Okay.

16 MR. GUNN: One is the Government has agreed to a
17 translation of Defense Exhibit 122, which is the prior
18 inconsistent statement we impeached Ms. Basang with in her
19 deposition. We would want to offer that into evidence as an
20 exhibit. The statement pursuant to what is I believe sort of
21 standard Cambodian practice in its courts is adopted by the
22 witness by a fingerprint, if not a signature, so it's actually
23 her statement even though it's written out by someone else.
24 It's a statement that she adopted, so I think it's her statement
25 and it's, therefore, admissible as a prior inconsistent

1 statement in addition to the questions we asked of her. So we
2 would want to put that in evidence as Defense -- we want to
3 offer Defense Exhibit 122, which is the Cambodian version, and
4 the translation which we would call Defense 123.

5 THE COURT: Does the Government have an objection?

6 MS. DONAHUE: We did but I think Mr. Gunn is right,
7 she did fingerprint it, so she -- I believe that means --
8 although he didn't specifically ask her, I believe that means
9 under their system it was read to her and she adopted it. So I
10 think that's right.

11 MR. GUNN: I will offer that at the appropriate point,
12 probably today. Maybe tomorrow morning.

13 THE COURT: All right.

14 MR. GUNN: Second, Your Honor, we now have Ly Kim
15 Eng's deposition and there was at least one prior inconsistent
16 statement in her statement to Sun Ro. There is also some prior
17 consistent statements in parts of it. So I would want to put
18 that into evidence. It's Defense Exhibit 117.

19 THE COURT: And prior consistent statements have a
20 whole different admissibility requirement from inconsistent
21 statements.

22 MR. GUNN: Right, but the Government cross-examined
23 her about this money she got and the people that came to visit
24 her --

25 THE COURT: The jury is waiting. We are not going to

1 discuss that now. We will discuss it later.

2 MR. GUNN: Except that I was going to do that early in
3 my -- what I was going to ask the Court, whether the proper way
4 to proceed would be to read it to the jury.

5 THE COURT: You don't need to do it now with the jury
6 waiting.

7 MS. DONAHUE: The first witness -- he wouldn't tell
8 us. The only purpose we know of for the first agent he is
9 calling is about his interview with Ly Kim Eng. So I'm assuming
10 the first thing out the gate is he is going to elicit what she
11 said to him.

12 MR. GUNN: That will be the second agent. I am going
13 to call Gary Phillips first. That is not related to this. That
14 is a prior consistent statement.

15 THE COURT: I am getting annoyed. The jury is
16 waiting. Stop babbling. What do you need to tell me?

17 MR. GUNN: Your Honor, I am going to call Agent King
18 and elicit from him that Ly Kim Eng told him in an interview of
19 June 26th, 2007, that it was her idea to bring L.K.xxx with her
20 when she got the job with Michael.

21 THE COURT: Okay. Fine.

22 MS. DONAHUE: That's the first we have been told.

23 THE COURT: Well, fine. Okay, Steve, please get the
24 jurors.

25 (Jury In)

1 THE COURT: Everyone is present.

2 Does the Defense have another witness?

3 MR. GUNN: Yes, Your Honor. We would call Gary
4 Phillips to the witness stand.

5 THE COURT: Sir, you are still under oath.

6 THE WITNESS: Yes, ma'am.

7 DIRECT EXAMINATION

8 BY MR. GUNN:

9 Q. Agent Phillips, you heard testimony just now, did you,
10 about Ly Kim Eng being cross-examined about receiving amounts of
11 money in the amount of 100,000 riels? Did you hear that?

12 A. Yes, sir, I did.

13 Q. You and other agents have given money for food to at least
14 one witness in this case, haven't you?

15 A. I did.

16 Q. That was I.T.'s grandmother; correct?

17 A. That is true.

18 Q. And you gave her three cases of noodles.

19 A. I did that.

20 Q. And that was at a cost of about \$14?

21 A. Yes, I did.

22 Q. And that's about 60,000 riels?

23 A. \$25 is 100,000 riels -- yeah, about.

24 Q. You didn't intend to bribe her or influence her testimony
25 did you?

1 A. Absolutely not.

2 Q. You just felt bad for her because it seemed like she didn't
3 have enough to eat; right?

4 A. She was very emaciated.

5 Q. Now, going to Ly Kim Eng again -- actually both Ly Kim Eng
6 and Kumlang met with you and answered your questions in this
7 case; right?

8 A. Yes, they did.

9 Q. Ly Kim Eng, the mother of L.K.xxx, met with you or
10 prosecutors six times, didn't she?

11 A. Don't know how many times it was. It was a few times.

12 Q. She met with you on June 5th, 2006; right?

13 A. June -- no.

14 Q. July 5th, 2006.

15 A. July 5th, 2006, that's correct.

16 Q. Then she met with you on June 27th, 2007?

17 A. I would have to look up my notes and everything, but if
18 it's in the report, yes.

19 Q. She had a meeting with you and Agent King sometime in the
20 summer of '07; right?

21 A. '07, I'm sorry, I thought you said '06. Yes, sir, that's
22 true.

23 Q. And she met with you again on or about November 15th, 2007?

24 A. That's true as well.

25 Q. And then she met with you again on February 27th, 2008?

1 A. Was that for the deposition?

2 Q. A little before the deposition?

3 A. Yes, sir. That's true.

4 Q. And then she met with you again on March 13th, 2008; right?

5 A. I would have to look at the note.

6 Q. But she did meet with you again a couple weeks after the
7 deposition, you and Mr. Lulejian; right?

8 A. Yes, that's true.

9 Q. In fact, it was you and another American agent who drove
10 her to and from the deposition that was taken; right?

11 A. Yes. She didn't have a way there.

12 Q. And Kumlang, the mother of S.R.xxx and S.S.xxx, also met
13 with you several times; right?

14 A. Probably about the same amount of times, yes, sir.

15 Q. And in the last meeting you had with her, she said she
16 would agree to meet with prosecutors if and when they came to
17 Cambodia; right?

18 A. Yes, she did say that.

19 Q. One of the girls you interviewed in this case who claims
20 she was raped by Mr. Pepe was a girl named I.T.; right?

21 A. That's true.

22 Q. And she claims she was raped twice; correct?

23 A. That's true as well.

24 Q. She told you the first time was on May 23rd, 2006; right?

25 A. No. That was my words.

1 Q. Okay.

2 That was the understanding you got out of the
3 interview; correct?

4 A. Based on my conversation with her and the World Hope
5 International folks, yes, it is.

6 Q. And the second time was May 26th, 2006; correct?

7 A. Again, that date was extrapolated -- that date was
8 extrapolated by me, not I.T..

9 Q. She also in the interview, I.T. said the hair of the man
10 was blond, didn't she?

11 A. I think -- no, I think she said it was light, but I would
12 have to look at the transcript.

13 Q. Would it refresh your memory if you saw the transcript?

14 A. Yes, sir, it would.

15 MR. GUNN: Your Honor, could I step over and get an
16 exhibit?

17 THE COURT: Sure.

18 MR. GUNN: If we could mark this, Your Honor, as I
19 think next in order in the 100 series would be 135.

20 THE COURT: For identification.

21 (Defendant's Exhibit 135 was marked)

22 BY MR. GUNN:

23 Q. Do you have Defense Exhibit 135 in front of you?

24 A. Yes, sir. If you could tell me the page, I would be happy
25 to look.

1 Q. Page 19.

2 A. Yes, you are correct, sir. That was my mistake. She said
3 his hair is blond.

4 MR. GUNN: No further questions, Your Honor.

5 THE COURT: Ms. Donahue?

6 MS. DONAHUE: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. DONAHUE:

9 Q. Special Agent Phillips, approximately when did you give
10 money to I.T.'s grandmother?

11 A. It was after the initial interview, about 30 minutes
12 afterwards I gave her three cases of noodles.

13 Q. When you say the initial interview, what year are you
14 talking about?

15 A. Several months ago.

16 Q. Recently?

17 A. Yes. It was recently.

18 Q. Why did you give her several cases of noodles?

19 A. When I went out to interview -- originally when you saw the
20 picture of her house, that was only -- that was a major
21 structure of many people's houses. She lived in the end
22 structure which was literally about eight-by-ten feet in a
23 wooden shack. She was sitting there and one of the neighbors
24 had brought her some noodles because she appeared to be very
25 hungry. She told us that she had no money and she had no food.

1 So after the interview, we felt bad for her. She only weighed
2 about 70 or 80 pounds. So we gave her noodles.

3 Q. Turning your attention to Ly Kim Eng, she is the mother of
4 L.K.xxx; is that correct?

5 A. That's true.

6 Q. And you have spoken with her on several occasions over the
7 course of this investigation; is that correct?

8 A. Yes.

9 Q. What has been the purpose of your conversations with Ly Kim
10 Eng?

11 MR. GUNN: Irrelevant, Your Honor.

12 THE COURT: Sustained.

13 BY MS. DONAHUE:

14 Q. You have also spoken with, you said, Kumlang; is that
15 right?

16 A. Yes.

17 Q. And Kumlang is the mother of S.S.xxx and S.R.xxx; correct?

18 A. That's correct.

19 Q. Now, you were asked about your interview in June of 2006
20 with I.T., specifically June 16 of 2006, regarding the May 23rd
21 date.

22 You said, "That was my words." What did you mean by
23 that?

24 A. Interviewing children, as you see, is difficult. And one
25 of the things that we have to do is we try to establish --

1 MR. GUNN: Objection, Your Honor. Non-responsive.

2 THE COURT: Overruled.

3 THE WITNESS: -- a timeline of when things occurred.

4 One of the things that we're taught is to try and find a common
5 date or something that they remember so we can start the process
6 of interviewing.

7 So basically what I determined through the translators
8 is that she rescued on or about May 28th. And through the
9 interview process, she told -- she gave us a time span of she
10 was last raped two or three days prior to the rescue, which
11 would have been about May 23rd or 24th. And then prior to that,
12 because she was raped two times, she said it was another two or
13 three days span, so I extrapolated the dates. Those -- and
14 that's my what my words were. It was kind of deductive
15 reasoning to get a timeline or start date when this incident
16 occurred.

17 BY MS. DONAHUE:

18 Q. Do you know how much education I.T. had had when you were
19 interviewing her in June of 2006?

20 A. Yes.

21 MR. GUNN: Objection. No foundation. Personal
22 knowledge, Your Honor.

23 THE COURT: If you know, you can -- well, I guess he
24 has already answered the question.

25 Do you want to ask the next question?

1 BY MS. DONAHUE:

2 Q. How much education had I.T. had at that point in June of
3 2006?

4 A. At the time she was 11 years she had first grade --

5 MR. GUNN: Objection. No foundation of personal
6 knowledge.

7 THE COURT: Sit down, please. I haven't heard a
8 foundation.

9 BY MS. DONAHUE:

10 Q. Had you asked I.T. whether or not she had been to school?

11 A. Yes.

12 MR. GUNN: Objection. Hearsay.

13 THE COURT: Overruled.

14 BY MS. DONAHUE:

15 Q. And based on what she had told you, did you know
16 approximately how much education I.T. had as of June of 2006?

17 A. Yes, I did.

18 Q. And how much was that?

19 MR. GUNN: Objection.

20 THE WITNESS: One year.

21 MR. GUNN: Objection. Hearsay, Your Honor.

22 THE COURT: Overruled.

23 THE WITNESS: She was in first grade.

24 BY MS. DONAHUE:

25 Q. When you interviewed her in June of 2006, did I.T. have a

1 diary or other written document displaying the precise dates on
2 which the defendant had raped her?

3 A. She did not.

4 MS. DONAHUE: I have no further questions.

5 THE COURT: Redirect or cross something?

6 MR. GUNN: Nothing further.

7 THE COURT: Thank you, sir. You can step down.

8 Does the Defense have another witness?

9 MR. GUNN: We call Agent Robert King, Your Honor and I
10 also at this point going to offer that exhibit.

11 THE COURT: Talk to Ms. Donahue.

12 Robert Lee King, Jr., Defendant's witness, was sworn

13 THE CLERK: Thank you. Please take the witness stand.

14 MR. GUNN: We may have resolved it, Your Honor, but I
15 will finish with this witness first because it's unrelated to
16 him.

17 THE CLERK: Please state your full name and spell your
18 last name for the record.

19 THE WITNESS: Robert Lee King, Jr., last name K-I-N-G.

20 THE COURT: You may proceed.

21 DIRECT EXAMINATION

22 BY MR. GUNN:

23 Q. Mr. King, how are you employed?

24 A. I am a special agent with the U.S. Customs and Border
25 Protection.

1 Q. Were you in that position back on June 27th, 2007?

2 A. No, sir, I was not.

3 Q. What was your position back on June 27th, 2007?

4 A. I was in Immigration and Custom Enforcement representative
5 in Bangkok, Thailand.

6 Q. And did you participate on that date in the interview of a
7 witness named Ly Kim Eng or Sok Eng?

8 A. Yes, sir.

9 Q. And she was the mother of a girl who had lived in
10 Mr. Pepe's house named L.K.xxx; correct?

11 A. That's correct.

12 Q. And she and L.K.xxx had lived at the house for three months
13 or so?

14 A. From what I recall in my report, six months.

15 Q. Ms. Eng told you that this woman named Basang offered her a
16 job at Mr. Pepe's house as a maid; correct?

17 A. Yes, sir.

18 Q. And she said that she told Basang that if she took the job,
19 she would have to take her daughter there to live as well,
20 didn't she?

21 A. Yes, she did.

22 Q. She didn't say it was Mr. Pepe's idea or Basang's idea to
23 have the daughter come with her, did she?

24 A. No, sir. I don't recall that.

25 MR. GUNN: No further questions.

1 THE COURT: Ms. Donahue or Mr. Lulejian?

2 MR. LULEJIAN: No questions.

3 THE COURT: Thank you, sir. You're excused.

4 Does the Defense have another witness?

5 MR. GUNN: Yes, Your Honor. It would be this
6 document, if we've worked it out, as I believe.

7 With the Court's permission, if the Government does
8 not oppose this, I would offer Defense Exhibit 117 into
9 evidence. It's the Cambodian version and the English language
10 translation of a statement made by Ly Kim Eng to Police Chief
11 Sun Ro of the Cambodian National Police.

12 THE COURT: That will be admitted.

13 (Defendant's Exhibit 117 was received)

14 MR. GUNN: If I could read it to the jury, Your Honor.
15 And my preference would be -- well, I will just read it to the
16 jury in whole. It's two paragraphs, Your Honor. I will not
17 read -- the statement -- the statement is dated June 19th, 2006.
18 And in the question/answer section it reads as follows:

19 "I would like to inform the law enforcement that I met
20 Sang, female, Vietnamese, about 30 years old through a Khmer
21 lady about 36 years old who lives around Roast Chicken Market
22 after the boat race festival in 2005. The lady brought me to
23 meet Sang at her house located at Kandal Market. Sang told me
24 to go work at Michael's house and I would receive \$30 a month.
25 At that time Sang brought Michael to come and see me and my

1 daughter L.K.xxx" -- we should perhaps redact this document,
2 Your Honor -- "14 years old, and said when living in this house,
3 we should speak softly and that for my daughter L.K.xxx, he
4 would help find a school. After reaching an agreement, Sang
5 took me and my daughter and another young boy to live in
6 Michael's house. Michael hired an English teacher to come to
7 the house teaching English to my daughter and me. After living
8 there for about four to five months, I left the house because
9 Michael kept giving me a hard time, so I left the house. I
10 didn't take my daughter with me because I left her there for her
11 to get an education and to live with Michael. While my daughter
12 was living in Michael's house, I came to visit her often, and
13 Michael gave me some money for me to go back home, about 2 to \$3
14 each time. As far as the money that Sang said she gave to me in
15 amount of \$300, I didn't know anything about it happened."

16 THE COURT: All right.

17 MR. GUNN: We have offered that into evidence.

18 THE COURT: It's admitted.

19 (Defendant's Exhibit 117 was received.)

20 THE COURT: Any other witnesses?

21 MR. GUNN: Yes, Your Honor. Our next witness would be
22 Eddy Wang. I have to get two exhibits out.

23 THE COURT: Okay.

24 Eddy Wang, Defendant's witness, was sworn

25 THE CLERK: Please state your full name and spell your

1 last name for the record.

2 THE WITNESS: Eddy. E-D-D-Y. Last name is Wang,
3 W-A-N-G.

4 THE COURT: You may proceed.

5 MR. GUNN: Thank you, Your Honor. If I could approach
6 with an exhibit.

7 THE COURT: Yes.

8 MR. GUNN: Does the Court -- the Court should already
9 have 126. May I confirm that, though?

10 THE CLERK: One moment, Your Honor.

11 MR. GUNN: It was an exhibit that was discussed
12 outside the presence of the jury and I believe admitted before
13 the Court.

14 THE COURT: I have it, yes.

15 MR. GUNN: Is there a copy for the clerk?

16 THE COURT: I don't think you gave the clerk one. You
17 just showed it to me.

18 MR. GUNN: If I could approach with 125, Your Honor.

19 THE COURT: Yes.

20 MR. GUNN: Does the clerk not have 126?

21 THE CLERK: No.

22 MR. GUNN: I have an extra copy of 126.

23 DIRECT EXAMINATION

24 BY MR. GUNN:

25 Q. Agent Wang, would you look at Defendant's -- Defense

1 Exhibit 125.

2 A. I have 125 in front of me.

3 Q. That's a copy of the front and the back of a page from a
4 photo album that was in the materials taken from Mr. Pepe's
5 house; correct?

6 A. These are copies of photos recovered from the defendant's
7 house, correct.

8 Q. And this particular exhibit has both the front and the back
9 of a set of photos; correct?

10 A. That is correct.

11 Q. And at the bottom of the page, there is a photo with some
12 people in it, including a girl who also appeared in photos in a
13 folder on Mr. Pepe's computer media that was named Nap and Kia;
14 correct?

15 A. That's correct.

16 Q. And on the back of that photo was written, quote, Nap,
17 (Ngoc) on right of photo family fish business, unquote; correct?

18 A. That's correct.

19 MR. GUNN: Your Honor, I would offer Defense
20 Exhibit 125 into evidence.

21 MR. LULEJIAN: No objection.

22 THE COURT: Admitted.

23 (Defendant's Exhibit 125 was received)

24 BY MR. GUNN:

25 Q. Would you now look at Defense Exhibit 126.

1 A. I have 126 in front of me.

2 Q. That is a medical record that was in the materials that was
3 found in Mr. Pepe's house, isn't it?

4 A. I don't recall this exact one.

5 MR. GUNN: Your Honor, could I speak to the
6 Government?

7 THE COURT: You may.

8 (Mr. Gunn and Government counsel confer.)

9 MR. GUNN: Your Honor, the Government will stipulate
10 it was one of the documents found in the house.

11 THE COURT: Thank you.

12 BY MR. GUNN:

13 Q. This medical record has the name Ngoc on it; right?

14 A. It does.

15 Q. It has an age of 19, doesn't it?

16 A. It does.

17 MR. GUNN: No further questions, Your Honor. I
18 believe 126 was already admitted.

19 THE COURT: It was not.

20 MR. LULEJIAN: Your Honor, the Government would ask
21 the Court give the limiting instruction we discussed.

22 THE COURT: Ladies and gentlemen, Exhibit 126, which
23 you will have with you in the jury room, contains various
24 different sorts of information in it. The document is not being
25 admitted, and you should not accept it for the truth of any of

1 the information in the document itself. It's being submitted to
2 you for the impact that it may have had on the defendant's state
3 of mind. To the extent that you think state of mind is
4 relevant, you should accept it for that purpose only.

5 MR. GUNN: Thank you, Your Honor. Now I would like to
6 read a stipulation into the evidence --

7 THE COURT: Are we relieving Mr. Wang?

8 MR. GUNN: I am sorry. Mr. Wang can be excused,
9 Your Honor.

10 THE COURT: Thank you. You are excused.

11 You may read your stipulation.

12 MR. GUNN: Thank you, Your Honor.

13 "It is hereby stipulated by and between plaintiff,
14 United States of America, through its counsel of record,
15 Assistant United States Attorneys Patricia Donahue and John
16 Lulejian, and defendant Michael Pepe, through his counsel of
17 record, Deputy Federal Public Defender Charles Brown and Deputy
18 Federal Public Defender Carlton F. Gunn as follows:

19 "One, Defense Exhibit 261 is an Excel spreadsheet
20 which lists the files found on the CD found in defendant's
21 residence in Phnom Penh, Cambodia, which is denominated as CD 3.
22 These files are located in the following folders in the
23 allocated space of CD 3: 'Arey Ksayh,' 'Cultural orph,' 'Monk
24 Funeral,' 'Old Village,' 'Pursat 100305,' 'Ream 071405,' 'Ream
25 2'.

1 "Two, Defense Exhibit 262 is an Excel spreadsheet
2 which lists the files found on the CD found in the defendant's
3 residence in Phnom Penh, Cambodia, which is denominated as CD 7.
4 These files are located in the following folders in the
5 allocated space of CD 7: 'Battenbang Trip,' 'Chanry 121105,'
6 'ID Chanry,' 'ID Chanry 2,' 'ID Chanry 3,' and 'ID Chanry 4'.

7 "Three, Defense Exhibit 263 is an Excel spreadsheet
8 which lists the files found on the CD found in defendant's
9 residence in Phnom Penh, Cambodia which is denominated as
10 CD 12. These files are located in the following folders in the
11 allocated space of CD 12: 'Bat house,' 'Bretts Part,' 'July
12 2005,' 'Brett's Party July 2005,' 'class group,' 'Hong's Party,'
13 'party,' 'party 2,' 'USA and party,' and 'House 061605'.

14 "Four, Defense Exhibit 264 is an Excel spreadsheet
15 which lists the files found on the CD found in defendant's
16 residence in Phnom Penh, Cambodia, which is denominated as
17 CD 12. These files are located in the following folders in the
18 allocated space of CD 12: 'New Folder'" --

19 I'm sorry. Your Honor. Let me consult with Counsel.
20 I believe there is a typo here, and it's my fault.

21 I am going to correct the stipulation in Paragraph 4,
22 Your Honor. CD 12 should be CD 15. And I will read that
23 sentence again for the record.

24 "Defense Exhibit 264 is an Excel spreadsheet which
25 lists the files found on the CD found in defendant's residence

1 in Phnom Penh, Cambodia which is denominated as CD 15. These
2 files are located in the following folders in the allocated
3 space of CD 15: 'New Folder,' 'Mom,' 'Moms,' 'School Party,'
4 Girls 012206,' 'sch girls'" -- S-C-H abbreviated -- "'2006-01
5 (Jan)-22,' Valentine Girls,' 'Christmas 1,' 'Christmas 2005,'
6 and 'Girls 121005'."

7 Your Honor, I would offer Defense Exhibits 261 through
8 264 into evidence. I have reached an agreement with the
9 Government that we will slightly modify them, but they won't be
10 shown to the jury at this time in any event.

11 THE COURT: All right. Those are admitted.

12 MR. GUNN: Thank you, Your Honor.

13 (Defendant's Exhibits 261 through 264 were received.)

14 THE COURT: Does the Defense have any further
15 witnesses?

16 MR. GUNN: Yes, Your Honor. I believe the next
17 witness is also mine and that would be David Nguyen-Galante.
18 Mr. Nguyen-Galante will need his computer with for the Encase
19 access as Mr. Pixley had.

20 David Nguyen-Galante, Defendant's witness, was sworn

21 THE CLERK: Please take the witness stand. Sir,
22 please state your full name and spell your full name as well.

23 THE WITNESS: My name is David Nguyen-Galante.
24 N-G-U-Y-E-N hyphenated G-A-L-A-N-T-E.

25 THE COURT: You may proceed.

1 MR. GUNN: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. GUNN:

4 Q. Mr. Nguyen-Galante, is it Mr. Nguyen or Galante or
5 Nguyen-Galante?

6 A. Galante will be fine.

7 Q. Mr. Galante, I'm in -- a little later in my examination I
8 am going to be asking you some questions about your Encase
9 images and analysis.

10 Do you need to boot up your computer or anything?

11 A. Yes.

12 Q. Okay.

13 Why don't you get that going while I ask you some of
14 these other questions.

15 Sorry, Your Honor. I didn't realize it would take
16 this much time.

17 If there is a place where you are waiting for it to do
18 something and you can answer some questions while you are doing
19 that, let me know.

20 A. Sure.

21 Q. All right.

22 How are you employed, Mr. Galante?

23 A. I am employed with the United States Department of Homeland
24 Security with Immigration and Customs Enforcement.

25 Q. And you're based in Singapore, are you not?

1 A. Yes.

2 Q. And your position there is as a forensic computer examiner?

3 A. No.

4 Q. What is your position?

5 A. My full-time position there is a special agent.

6 Q. And one of the things you do though is forensic computer
7 analysis?

8 A. Forensic analysis is part of my duty.

9 Q. All right.

10 And you actually conducted a forensic computer
11 analysis of some computer media in this case; correct?

12 A. Yes.

13 Q. You were actually the first American representative to
14 analyze the media or -- correct?

15 A. Yes.

16 Q. And the three items, one of the items was a Maxtor computer
17 hard drive from a regular desktop computer; correct?

18 A. Yes.

19 Q. That's the thing in the computer where all the computer
20 files and software and so on are sort of stored, right, is the
21 hard drive?

22 A. Yes.

23 Q. And another item you examined was a Transcend USB jet flash
24 thumb drive; correct?

25 A. Yes.

1 Q. That's a portable storage device that can be attached to a
2 computer and used to copy things off of a computer or copy
3 things onto the computer?

4 A. Yes.

5 Q. It's called a thumb drive because it's about the size of a
6 thumb; right?

7 A. Correct.

8 Q. You stick it into one of the ports of your computer just
9 like you were sticking some other things back there just now;
10 right?

11 A. Yes.

12 Q. And thumb drives are typically used to transfer data or
13 information from one computer to another computer or something
14 like that; would that be fair to say?

15 A. Yes.

16 Q. And this third item of computer media that you analyzed was
17 a digital camera media card; correct?

18 A. Yes.

19 Q. That's the little computer chip or little chip you stick in
20 a digital camera?

21 A. Correct.

22 Q. And then you transfer images from that little media card or
23 chip onto a computer when you want to put them on a computer;
24 right?

25 A. Yes.

1 Q. I would like to start with the digital camera media card.

2 You analyzed that; right?

3 A. Yes.

4 Q. You did a forensic analysis of it?

5 A. Correct.

6 Q. And you didn't find any child pornography on that, did you?

7 A. I did not.

8 Q. And you checked what is called the unallocated space,
9 right, as well as readily viewable files?

10 A. Yes.

11 Q. And you can do that with special forensic computer
12 software?

13 A. Correct.

14 Q. So there -- strike that.

15 On the thumb drive -- going to the thumb drive, there
16 were a number of photos stored on the thumb drive; correct?

17 A. Yes.

18 Q. And the photos were grouped in what are called folders or
19 sub folders; right?

20 A. Yes.

21 Q. And each folder -- each photo in a folder has a file name;
22 right?

23 A. Yes.

24 Q. Usually it's a number followed by the suffix .JPG?

25 A. No.

1 Q. How is it usually --

2 A. A photo can be a name. It doesn't have to be a number.

3 Q. But it's some name or number followed by the suffix .JPG;
4 right?

5 A. Yes.

6 Q. JPG generally is what signifies that something is a photo
7 type of file; right?

8 A. Yes.

9 Q. There was a folder on the thumb drive that was called
10 Friends 111111; right?

11 A. Yes.

12 Q. And can you pull that up on your computer and pull up a
13 file with a name 017.JPG?

14 If I could approach with an exhibit, Your Honor?

15 THE COURT: You may.

16 BY MR. GUNN:

17 Q. Would you look at Defense Exhibit -- if could park -- it's
18 premarked as 315, Your Honor.

19 THE COURT: All right.

20 BY MR. GUNN:

21 Q. Would you look at Defense Exhibit 315 and tell us if that
22 matches up with what is on your image of the computer or the
23 thumb drive with 017.JPG in the Friends 111111 directory?

24 A. Yes, it does.

25 MR. GUNN: Your Honor, I would offer Defense

1 Exhibit 315 into evidence.

2 THE COURT: Any objection?

3 MS. DONAHUE: Relevance.

4 THE COURT: I'll admit it.

5 (Defendant's Exhibit 315 was received)

6 MR. GUNN: Your Honor, I would like to publish it for
7 the jury. If the screen's not off -- I don't know if the
8 witness wants the screen on for this or not. It doesn't
9 necessarily need to be.

10 THE COURT: Let's not have the screen on.

11 BY MR. GUNN:

12 Q. And that's the image you have on your computer screen?

13 THE COURT: Okay. Take it off the screen.

14 THE WITNESS: Yes.

15 THE COURT: I don't know who has the control, but
16 somebody needs to --

17 MR. GUNN: Oh, I'm sorry, Your Honor.

18 THE COURT: I think we've seen it.

19 MR. GUNN: That's fine, Your Honor. I didn't realize
20 it was up there.

21 THE COURT: That's all right.

22 BY MR. GUNN:

23 Q. You also did a forensic examination of this thumb drive;
24 right?

25 A. Yes.

1 Q. But it was an Encase image that you examined rather than
2 the original thumb drive; right?

3 A. That is correct.

4 Q. And an Encase image is -- would you explain to the jury
5 what an Encase image is?

6 A. An Encase image, forensic image, is a mirror image of a --
7 of the -- Mr. Pepe's hard drive, so when we do our analysis --

8 Q. Let me stop you.

9 We are talking about the thumb drive though now;
10 right?

11 A. Yes.

12 Q. So you just said an image of the hard drive.

13 A. I'm sorry.

14 Q. It would be an image of the thumb drive in this instance?

15 A. Correct.

16 Q. Go ahead.

17 A. So basically we never make an analysis of the original
18 media in the case, Mr. Pepe's thumb drive. We make a forensic
19 image using Encase software to make a -- a mirror image of that
20 thumb drive to where we can make -- conduct analysis of it.

21 Q. And that's standard procedure for doing -- when you do a
22 forensic computer analysis; right?

23 A. Yes.

24 Q. And there is a reason for that procedure; right?

25 A. Yes.

1 Q. The reason is to keep the computer item from being changed
2 either accidentally or on purpose; right?

3 A. Correct.

4 Q. It's important to make sure the item isn't tampered with in
5 some way?

6 A. Yes.

7 Q. And that's because computer items are easy to either change
8 deliberately or mess up accidentally; right?

9 A. Correct.

10 Q. Important dates attached to computer files can get changed?

11 A. Yes.

12 Q. Files can be put on that weren't on the item before?

13 A. Yes.

14 Q. Other things can happen too, right?

15 A. I'm sorry. What other things?

16 Q. Well, I will withdraw the question.

17 In fact, there were changes made and things added to
18 this particular thumb drive after Mr. Pepe was arrested and it
19 was taken from his house, weren't there?

20 A. Yes.

21 Q. First of all, someone added at least one photograph to the
22 thumb drive after Mr. Pepe was arrested; isn't that correct?

23 A. Yes.

24 MR. GUNN: Your Honor, could I approach and have an
25 exhibit marked?

1 THE COURT: You may.

2 MR. GUNN: If we could call this 201, Your Honor.

3 (Defendant's Exhibit 201 was marked)

4 BY MR. GUNN:

5 Q. Do you still have your Encase image of the thumb drive
6 open?

7 A. Yes, I do.

8 Q. Would you find a file that is named, I believe,
9 IMGPI234.JPG?

10 A. Yes.

11 Q. That's a photograph of Mr. Pepe in handcuffs, isn't it?

12 A. Yes.

13 Q. Your Honor -- and does it match Defense Exhibit 201?

14 A. Yes.

15 MR. GUNN: Your Honor, I would offer 201 into
16 evidence.

17 THE COURT: Any objection?

18 MS. DONAHUE: No.

19 THE COURT: Admitted.

20 (Defendant's Exhibit 201 was received)

21 BY MR. GUNN:

22 Q. This is Defense Exhibit 201 and also what you have on your
23 screen that was on the thumb drive?

24 A. Yes.

25 Q. So that photograph was added after Mr. Pepe was arrested;

1 correct?

2 A. Yes.

3 Q. You can also tell that someone opened up the files on the
4 thumb drive and looked at them after they were taken from
5 Mr. Pepe's home, can't you?

6 A. Yes.

7 MR. GUNN: Your Honor, could I have Defense
8 Exhibit 2002 -- could I approach with it?

9 THE COURT: Sure.

10 THE CLERK: 202?

11 MR. GUNN: Yes.

12 Q. I would like you to look at Defense 2002. Do you have that
13 in front of you?

14 THE COURT: 202 or 2002?

15 MR. GUNN: It's 02.

16 Q. Do you have that in front of you?

17 A. Yes.

18 Q. That's an official U.S. Customs form; isn't it?

19 A. Yes.

20 Q. It's called custody receipt for seized property in
21 evidence; right?

22 A. Yes.

23 Q. It's intended to list evidence that's seized, when it's
24 seized and when and to whom it's transferred; correct?

25 A. Yes.

1 Q. It's kept because agents who seize evidence have a duty to
2 keep a record of how it's handled?

3 A. Yes.

4 Q. It's kept in the regular course of ICE's business and
5 practices; right?

6 A. Correct.

7 Q. And the dates and the description of the evidence that are
8 written on it are written in at or near the time of the seizure
9 or transfer in question; right?

10 A. Yes.

11 Q. And in fact, the form is signed by the people who take the
12 evidence when it's transferred; correct?

13 A. Yes.

14 Q. This one is even signed by you as taking some of the
15 computer evidence on June 30th, 2006; correct?

16 A. Sorry. My copy is pretty blurred. I can't see.

17 THE COURT: Can you point us to some place, Mr. Gunn?

18 BY MR. GUNN:

19 Q. Is this one not signed by you -- do you recall signing a
20 form like this?

21 A. Yes.

22 Q. For the computer evidence?

23 And this is a form for the computer evidence in
24 question, isn't it?

25 A. I can't see on this form, sir.

1 Q. Would you look at Item 9 on the second page?

2 That refers to the thumb drive that you analyzed;
3 correct?

4 A. I believe the chain of custody was on the different form,
5 sir. Not this one.

6 Q. All right.

7 But the thumb drive is reflected on this document
8 correct? As Item 9?

9 A. Yes.

10 Q. And that's the thumb drive you analyzed; correct?

11 A. According to this form, chain of custody, I did not sign
12 for this -- for that particular thumb drive.

13 Q. Right.

14 But the thumb drive is listed on here is the same
15 thumb drive you examined; right?

16 A. I don't know. I didn't sign for this particular form.

17 Q. Do you have another chain of custody form where you did
18 sign for the thumb drive?

19 A. Yes.

20 Q. Do you have that with you?

21 A. I have to check.

22 MR. GUNN: I'll deal with it at a recess, Your Honor.

23 THE COURT: Okay. Great.

24 THE WITNESS: Give me one second. I can look for it.

25 THE COURT: That's all right.

1 MR. GUNN: We can address it at a recess later.

2 Q. In any event, you took and analyzed this thumb drive;
3 correct?

4 A. Yes.

5 Q. And your Encase software let's you look at dates that are
6 attached to files on the thumb drive, doesn't it?

7 A. Yes.

8 Q. And one of the dates attached to each file is the date
9 called last accessed?

10 A. That's correct.

11 Q. That usually means the date the file was last opened UP AND
12 looked at; right?

13 A. Yes.

14 Q. When you open up the -- well, do you still have the Encase
15 image of the thumb drive open?

16 A. Yes.

17 Q. Would you look at the last accessed dates for the files in
18 a folder called Friends 1111.

19 A. Dated June 23rd, 2006.

20 Q. So that was after Mr. Pepe was arrested; correct?

21 A. Yes.

22 Q. Would you look at the last access dates for a folder called
23 Nary 2?

24 A. It is also the same date, June 23rd, 2006.

25 Q. Would you look at last access dates for Picture Nos. 1

1 through 5 in a folder called Spider?

2 A. Also the same date, June 23rd, 2006.

3 Q. And would you look at the last access dates for pictures
4 numbered 1 through 13 in a folder called Up North? Not the sub
5 folders within that folder but the folder itself.

6 A. Still on the same date, June 23th, 2006.

7 Q. So the last access dates on all of those files are after
8 the date the thumb drive was taken from Mr. Pepe's home;
9 correct?

10 A. Yes.

11 Q. Which means someone was examining the original thumb drive
12 after it was seized; right?

13 A. Correct.

14 Q. There was also a whole folder added to the thumb drive
15 after Mr. Pepe was arrested, wasn't there?

16 A. Yes.

17 Q. Would you look for a folder in the Encase image of the
18 thumb drive that's named Pepe Case 008?

19 A. Yes.

20 Q. Do you have that there?

21 A. Yes.

22 Q. What is the last access date for that folder?

23 I am getting an exhibit while he's looking,
24 Your Honor.

25 A. Is June 18th, 2006.

1 Q. And does it also have two other dates called File Created
2 and Last Written?

3 A. Yes.

4 Q. And what are those dates?

5 A. June 18th, 2006.

6 Q. And what does the File Created date mean?

7 A. It's the date the file was written into the thumb drive.

8 Q. What does the Last Written date mean?

9 A. That's the last date that it was created.

10 Q. So this folder was actually created on the thumb drive
11 after Mr. Pepe was arrested; correct?

12 A. Yes.

13 MR. GUNN: No further questions, Your Honor.

14 THE COURT: From the Government?

15 CROSS-EXAMINATION

16 BY MS. DONAHUE:

17 Q. Good morning, Special Agent Galante.

18 A. Good morning.

19 Q. Special Agent Galante, I would like to show you what has
20 previously been admitted as Government's Exhibit 2102. It's a
21 page from Mr. Pixley's PowerPoint. If you can just take a look
22 at the screen.

23 Special Agent Galante, do you see at the top where it
24 says Pepe TD 256 MB? To your knowledge, that stands for thumb
25 drive, 256 megabytes; is that correct?

1 A. Yes.

2 Q. You were asked about some files that were created after
3 this thumb drive was seized.

4 Are those the three items listed in the large box on
5 the right on this slide?

6 A. Yes.

7 Q. And you worked for US Immigration and Customs Enforcement;
8 is that right?

9 A. Yes.

10 Q. Did you create these three files on the defendant's thumb
11 drive after the seizure?

12 A. I did not.

13 Q. These were on the thumb drive when you received it from
14 Cambodia on June 30th of 2006; isn't that correct?

15 A. That is correct.

16 Q. Looking down the left column where you see the blue checks,
17 do those blue checks -- are those -- excuse me -- blue checks
18 next to folders that contain files that were accessed after
19 June 17th of 2006?

20 A. Correct.

21 Q. Did you access or write to any of those folders after
22 June 17th of 2006?

23 A. I did not.

24 Q. That had already been done by the time you received this
25 piece of media on June 30th of 2006; is that right?

1 A. That is correct.

2 MS. DONAHUE: I have no further questions.

3 THE COURT: Mr. Gunn?

4 MR. GUNN: Could I have one moment, Your Honor?

5 THE COURT: Sure.

6 (Mr. Gunn and Mr. Brown confer off the record)

7 MR. GUNN: No questions, Your Honor. No further
8 questions.

9 THE COURT: Thank you, sir. You're excused.

10 THE WITNESS: Thank you.

11 THE COURT: While the witness is packing up his gear,
12 do we have another witness, Mr. Gunn?

13 MR. BROWN: Your Honor, the Defense calls Sander
14 De Montero.

15 MR. GUNN: I will step out and get her, Your Honor.

16 THE COURT: Thank you.

17 Sander De Montero, Defendant's witness, was sworn

18 THE CLERK: Please take the witness stand. Please
19 state your full name and spell your full name.

20 THE WITNESS: Sander De Montero. S-A-N-D-E-R, space
21 D-E, space M-O-N-T-E-R-O.

22 THE COURT: Thank you. Before we proceed, I am going
23 to ask our Cambodian interpreter to state your name again and
24 spell it so it's closer in the record than we had it before and
25 remind you that you're still under oath.

1 THE INTERPRETER: C-H-A-N-D-R-A, last name H-A-C.

2 THE COURT: You may proceed.

3 MR. BROWN: Thank you very much, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. BROWN:

6 Q. Good afternoon, Mr. De Montero. I want to talk a little
7 bit about your background.

8 Of what country are you a citizen?

9 A. Australian.

10 Q. Are you also a Cambodian national?

11 A. I was born in Cambodia.

12 Q. Were you raised in Cambodia?

13 A. I was born in Cambodia and raised in Cambodia until 24
14 years old before I went to Australia.

15 Q. When did you leave for Australia? What year was that?

16 A. At the end of 1970.

17 Q. And why did you go to Australia?

18 A. I was there because I did receive a scholarship from
19 Colombo Plan.

20 Q. So you received a scholarship to study in Australia?

21 A. Yes.

22 Q. That was the University in Australia?

23 A. Yes.

24 Q. What did you study?

25 A. Information technology.

1 Q. And did you work in a place called Victoria, Australia?

2 A. Yes. I worked as a government employee in the area called
3 Victoria.

4 Q. What did you do in that capacity?

5 A. Assistant analyst.

6 Q. Was that for the Ministry of Education?

7 A. Yes. In the state of Victoria.

8 Q. At some point, did you return to Cambodia in the mid '90s,
9 Mr. De Montero?

10 A. In '94 I went back to Cambodia.

11 Q. Why did you return to Cambodia in 1994?

12 A. Because I was invited to join or invited to Cambodia by the
13 Minister of Education.

14 Q. Who was the Minister of Education?

15 A. Mr. Ung Huot.

16 Q. What did you do when you returned to Cambodia in 1994?

17 A. I worked under the aid from Australia, is called the
18 examination project.

19 Q. And that was an educational project sponsored by the
20 Australian government to work in Cambodia?

21 A. Yes.

22 Q. And that was in 1994. Did something significant happen in
23 July of 1997, Mr. De Montero, while you were in Cambodia?

24 A. Yes. During '97, around the 5th or the 6th, it was a coup,
25 so it did change the structure of the politics a little bit.

1 Q. There was a change in the political structure in 1997; is
2 that right?

3 A. Yes. At the time they have the acting Prime Minister for
4 that period.

5 Q. And at that point, did Ung Huot, who was the Minister of
6 Education, become Prime Minister of Cambodia?

7 A. Yes.

8 Q. And how did that affect your duties and responsibilities?

9 A. I became the vice under the Secretary of State in
10 education.

11 Q. You became the Under Secretary of State in education for
12 the country of Cambodia?

13 A. Yes.

14 Q. Did you have any other duties and responsibilities?

15 A. I also the vice on the Human Rights Committee of Cambodia.

16 Q. Mr. De Montero, at some point did you come to know a person
17 named Michael Pepe?

18 A. Yes.

19 Q. How did you meet Michael Pepe?

20 A. His wife took him to my home.

21 Q. And what was -- how was Mr. Pepe employed at that time?

22 A. He's a teacher in the University of Pannasastra.

23 Q. And Pannasastra is a university in Phnom Penh?

24 A. It's a private university.

25 Q. So Mr. Pepe was a professor at Pannasastra University?

1 A. Yes. He taught management.

2 Q. And did Mr. Pepe -- is that the circumstances of your
3 meeting him? Did you have a shared interest in education with
4 Mr. Pepe? Is that why?

5 A. Yes. Because of that we make it an interesting meet with
6 him.

7 Q. At some point, Mr. De Montero, did you discuss with
8 Mr. Pepe the idea of educational outreach to the poor
9 communities of Cambodia?

10 A. Yes. We did discuss about how to make a plan in order to
11 further our outreach to the children in the suburb.

12 Q. Whose idea was that originally?

13 A. It's Mr. Michael Pepe's idea.

14 Q. And at some point, did you make arrangements or -- to go
15 out and distribute school supplies to some of the poor
16 communities?

17 A. Yes. I did have a program so Mr. Pepe can distribute some
18 gift and school supply for those children.

19 MR. BROWN: And, Your Honor, I believe Defense
20 Exhibit 380 has already been received into evidence. If I could
21 just publish a couple of pictures from that series to the jury,
22 Your Honor.

23 THE COURT: If it's in evidence, that's fine.

24 MR. BROWN: Your Honor, we are showing No. 13 from
25 that series.

1 Q. Mr. De Montero, there is a picture on the screen.

2 Can you see that?

3 A. Yes.

4 Q. Okay.

5 Is that you in the photo?

6 A. Yes.

7 Q. And what are you doing there?

8 A. That is the place that we distributing some gift to the
9 handicapped children's in Phnom Penh.

10 Q. This was a handicap -- was it a school or a church?

11 A. It's in church.

12 Q. Who else do you recognize in that photo?

13 A. The picture in there with the black shirt and the khaki
14 trousers is Mr. Pepe.

15 Q. Who is the woman there in black?

16 A. That's my wife.

17 MR. BROWN: Your Honor, if we could publish No. 43
18 from that series.

19 THE COURT: Yes.

20 BY MR. BROWN:

21 Q. It's a little dark, but is that you in that photo,
22 Mr. De Montero?

23 A. Yes. I can see.

24 Q. Is that the same location?

25 A. Yes.

1 THE COURT: Don't worry about the exhibit. He can
2 just look at it on the screen.

3 BY MR. BROWN:

4 Q. Mr. De Montero, on how many occasions did you distribute --
5 you and Michael Pepe distribute school supplies?

6 A. Over ten times.

7 Q. Were there times that you distributed school supplies and
8 Mr. Pepe was not present?

9 A. Yes.

10 Q. And were there times that you distributed supplies to
11 places that -- for example, to a naval base where there were no
12 children present?

13 A. Yes.

14 Q. What were the circumstances of that?

15 A. It's the area that's a lot of the Navy -- naval spouse --
16 the Navy's --

17 Q. Wives?

18 A. Wife that live there is quite a few of them, a few hundred.
19 Yes. A few hundred of them there.

20 Q. That was at the Ream Naval Base?

21 A. Yes.

22 Q. What were the circumstances of that outreach program?

23 A. It's the program that Mr. Pepe fill that is a democracy
24 program so they can enjoy that.

25 Q. At some point, Mr. De Montero, did you introduce Michael

1 Pepe to higher ranking government officials in Cambodia?

2 A. Yes.

3 Q. Did you introduce Mr. Pepe to a person named Ung Huot?

4 A. Yes.

5 Q. Who is Ung Huot again?

6 A. At the time that Mr. Pepe -- that I introduce him to
7 Mr. Ung Huot, he was a vice in the political party called
8 Funcinpec.

9 Q. Was he the former Prime Minister at that point?

10 A. Yes.

11 Q. Did you introduce Mr. Pepe to a person named Khieu San?

12 A. Yes.

13 Q. Why did you introduce Mr. Pepe to those individuals?

14 A. Because I felt that those people can introduce him and open
15 doors that he reach out to a wider area.

16 Q. Mr. De Montero, after Mr. Pepe was arrested, did you go to
17 Prey Sar Prison at some point?

18 A. Yes, the next day I went there and tried to look for him
19 right away.

20 Q. Okay.

21 And did you talk to any of the mothers of the
22 children that were -- yes -- did you talk to Ly Kim Eng at
23 Prey Sar Prison?

24 A. Yes. I met her there.

25 Q. Okay.

1 And did you talk to Kumlang at Prey Sar Prison?

2 A. Yes.

3 Q. Okay.

4 Why did you go to Prey Sar Prison?

5 A. First I want to visit Michael.

6 Q. Michael was at Prey Sar Prison also?

7 A. Yes.

8 Q. And were you concerned about Michael's well-being at
9 Prey Sar Prison?

10 A. It's horrible living in that prison.

11 Q. Can you describe for the jury what Prey Sar Prison is like?

12 MR. LULEJIAN: Objection, Your Honor. Relevance.

13 THE COURT: Sustained.

14 BY MR. BROWN:

15 Q. Based on what you know of the conditions at Prey Sar
16 Prison, for people to get basic care, they need outside
17 assistance?

18 THE COURT: The objection was relevance. The
19 objection was sustained.

20 BY MR. BROWN:

21 Q. Why did you go to Prey Sar Prison?

22 A. To visit him.

23 Q. And what else?

24 A. I also want to deliver a letter. To talk to Michael
25 because he did receive a letter from the inmate asking for help.

1 Q. Okay.

2 And what did you do next?

3 A. I went to see all those four lady that was arrested and
4 kept there.

5 Q. Were you going to bribe those people or influence their
6 testimony, Mr. De Montero?

7 A. No, I did not have the intention to go there and bribe
8 them. I went there because they request me to go there so they
9 can ask me to help.

10 Q. Help in what way?

11 A. First of all, they do not receive proper food and also they
12 was ill. They need some medication. And the mother of Ly Kim
13 Eng she has some problem and she want he kindly to pass some
14 word.

15 Q. At some point, Mr. De Montero, did you meet again with the
16 mother of Ly Kim Eng?

17 A. I met with her mother-in-law.

18 Q. I'm sorry. Her mother-in-law.

19 A. Yes.

20 Q. And what -- why?

21 A. Because she want me to ask her mother-in-law to take care
22 of one of her children that she left with her.

23 Q. Was that her young son David?

24 A. Yes.

25 THE COURT: Mr. Brown, whenever it's a good time to

1 break.

2 MR. BROWN: Your Honor, I just have a few more
3 questions.

4 THE COURT: Okay.

5 BY MR. BROWN:

6 Q. And what happened when you went to see the mother-in-law of
7 Ly Kim Eng?

8 A. When I spoke to her for a short period of time, she
9 informed me that -- we call it Angkor which is the group or
10 something, the organization, offer her \$50,000, and she asked
11 me, "How much can you offer?"

12 Q. And what was your response to that?

13 A. I told her that I have nothing to discuss about money. I
14 came here just to tell you about the son -- her son's David --
15 her grandson.

16 Q. When you say the organization offered \$50,000, was she
17 referred to the NGO where L.K.xxx was residing?

18 MR. LULEJIAN: Objection. Calls for speculation.
19 Lack of personal knowledge.

20 THE COURT: Lay some foundation for that, Mr. Brown.

21 BY MR. BROWN:

22 Q. Mr. De Montero, you mentioned that it was an organization
23 that the mother-in-law referred to.

24 Do you know what organization she was referring to?

25 A. That's -- she did not reveal the name of that organization,

1 but that is the organization that took her daughter away,
2 L.K.xxx.

3 MR. LULEJIAN: Your Honor, I would move to strike
4 everything after "that is the organization."

5 THE COURT: I am going to strike it for now and you
6 can ask another question and see if you can lay any foundation
7 for that knowledge.

8 BY MR. BROWN:

9 Q. Mr. De Montero, were you aware that Ly Kim Eng --

10 THE COURT: That is not how you lay the foundation.
11 He either knows it from something or he doesn't.

12 BY MR. BROWN:

13 Q. How do you know that L.K.xxx was at an organization?

14 A. Because the mother-in-law told me that the organization
15 took her to take care of her.

16 Q. And is that the organization that -- that the \$50,000 was
17 in reference to, if you know?

18 THE COURT: Sustained. That's not -- the testimony
19 remains stricken.

20 MR. BROWN: No further questions, Your Honor.

21 THE COURT: All right, we will take a break. Ladies
22 and gentlemen, don't talk about the case or form or express any
23 opinions about the case until it's finally submitted to you.

24 (Recess taken)

25 (Jury Out)

1 MR. GUNN: Real quickly, Agent Galante found the next
2 step in the chain of custody form that he signed, so I would
3 like to offer Defense Exhibits 202 and 204 into evidence. And I
4 believe the Government does not object.

5 THE COURT: All right. Fine.

6 (Defendant's exhibits 202 and 204 were received)

7 (Jury In)

8 THE COURT: All right. Everyone is back. The witness
9 is back on the stand. The witness and the interpreter are still
10 under oath.

11 Mr. Lulejian?

12 MR. LULEJIAN: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. LULEJIAN:

15 Q. Good afternoon, sir. Mr. De Montero, you testified earlier
16 that you and the defendant are friends; is that right?

17 MR. BROWN: Objection. Misstates the evidence,
18 Your Honor.

19 THE COURT: I don't know that I heard that,
20 Mr. Lulejian. Why don't you just ask him.

21 MR. LULEJIAN: I will just ask him.

22 Q. You and the defendant are friends, aren't you?

23 A. Kind of, yes.

24 Q. In fact, you're pretty good friends; isn't that right?

25 A. A friend in work.

1 Q. In fact, you're related to Mr. Pepe through marriage,
2 aren't you?

3 A. Yes. His wife is my -- the sister of my wife.

4 Q. And your wife's name is again?

5 A. Borat.

6 Q. And Borat is Mr. Pepe's wife whose name is Chanry; isn't
7 that right? I'm sorry, the sister of Mr. Pepe's wife Chanry?

8 A. Yes.

9 Q. So there is a familial tie other than just friendship?

10 A. I don't know what kind of tie you're talking about.

11 Q. There is a tie through marriage? You're related?

12 A. In a way, yes. But he's a foreigner and we are just
13 Cambodian among ourselves. We have a different culture.

14 Q. But when a foreigner marries into a Cambodian family, he
15 becomes part of that family, doesn't he?

16 A. Yes. Become a family but it's not a close knit family.

17 Q. Well, when one becomes a family there is certain
18 obligations in Cambodian culture that one has to follow; isn't
19 that right?

20 A. I do not understand how close you meant.

21 Q. Under Cambodian culture one family member helps out another
22 family member because they are part of the family; right?

23 MR. BROWN: Objection. Vague, broad as to Cambodian
24 culture, Your Honor. No foundation.

25 THE COURT: Overruled.

1 THE WITNESS: Well, I feel that's not Cambodian but
2 any other nationality will feel the same.

3 BY MR. LULEJIAN:

4 Q. And in the culture of Cambodia, when one -- when one has a
5 family member, one feels an obligation to help out that family
6 member?

7 A. In a way, yes.

8 Q. And in this case, you helped out the defendant, didn't you?

9 A. I'm here. It's not because Michael is a part of our
10 family. It's that is my job and he also, you know, trying to
11 help in the human rights.

12 Q. You helped out Michael because you have an obligation
13 because he was a member of your family, didn't you?

14 MR. BROWN: Objection. Asked and answered,
15 Your Honor.

16 THE COURT: Overruled.

17 THE WITNESS: No. Because I'm just an in-law. It's
18 not a blood relative.

19 BY MR. LULEJIAN:

20 Q. Well, even though you are not a blood relative, you
21 introduced the defendant to some pretty powerful people in
22 Cambodia; isn't that right?

23 A. Yes.

24 Q. In fact, you introduced him to the former Prime Minister of
25 that country?

1 A. Yes.

2 Q. That was Ung Huot; right?

3 A. Yes.

4 Q. And Ung Huot is currently a Senator in Cambodia, isn't he?

5 A. Yes.

6 Q. Even though the Funcinpec party isn't in power, Ung Huot
7 still has powerful political connections, doesn't he?

8 A. Yes.

9 Q. And you also introduced him to another member of the
10 Funcinpec party, Khieu San, didn't you?

11 A. Yes.

12 Q. And Khieu San is a member of the National Assembly in
13 Cambodia, isn't he?

14 A. Yes.

15 Q. He holds a position of power as well?

16 A. Yes.

17 Q. In fact, Khieu San is known all over Cambodia for his work
18 in human rights and his radio broadcasts, isn't he?

19 A. Yes.

20 Q. And it's fair to say that by -- that Khieu San could open
21 doors for Mr. Pepe; isn't that right?

22 A. Yes. But to expand his program that he wanted to
23 distribute throughout Cambodia.

24 Q. And it's fair to say that Ung Huot could open up doors that
25 would normally be closed for Mr. Pepe; isn't that right?

1 A. Yes.

2 Q. And Mr. Pepe didn't have contact with Khieu San before you
3 introduced him, did he?

4 A. Yes.

5 Q. And Mr. Pepe didn't have access to Ung Huot before you
6 introduced him, did he?

7 A. Yes.

8 Q. So it's fair to say that you were the one who helped your
9 brother-in-law get access to the top levels of Cambodian
10 government; isn't that right?

11 A. I introduced him to those high rank officer. It's not
12 because it's my brother-in-law. Because we share a common
13 project.

14 Q. The question, sir, was you introduced Mr. Pepe to those
15 people?

16 A. Yes.

17 Q. And he is brother-in-law?

18 A. Yes.

19 Q. And he is family?

20 A. Yes.

21 Q. And in Cambodia, one has obligations to family members?

22 A. It's not just Cambodian. Every family tree. It's just
23 helping out human race.

24 Q. Have you been in Mr. Pepe's house?

25 A. I lived there also.

1 Q. When did you live there?

2 A. When Pepe came to visit United States.

3 Q. When was that?

4 A. I -- I don't remember exactly the date but when he came
5 back to visit United States and I went there to live there in
6 order to take care of that house also.

7 Q. Mr. Pepe has been back and forth between Cambodia and the
8 United States a number of times, hasn't he?

9 A. Yes.

10 Q. And was it the last trip before his arrest that you went to
11 stay at his house?

12 A. No. Not the last trip.

13 Q. So it was the one before that?

14 A. Probably.

15 Q. So it wasn't in the fall of 2005 that you stayed at the
16 house?

17 A. That I don't know for sure.

18 Q. Have you been to his house after August 2005?

19 A. It's quite often to discuss about the project.

20 Q. But you have been at his house after August of 2005?

21 A. Yes. I did.

22 Q. Did you spend the night there?

23 A. No. I did not stay there overnight.

24 Q. And when you were there, was Chanry, his wife, there each
25 time?

1 A. Well, I visit there, his house, during the daytime, you
2 know, but sometime she wasn't there.

3 Q. So sometimes Chanry wasn't at the house?

4 A. I did not see her there. During the daytime.

5 Q. When you were there -- actually let me ask you this:

6 In fact, Chanry moved out of the house in 2005, didn't
7 she?

8 MR. BROWN: Objection. Lack of personal knowledge, no
9 foundation.

10 THE COURT: Do you want to lay some foundation?

11 MR. LULEJIAN: I will lay some foundation.

12 Q. During the times that you were there -- the times that you
13 were at Mr. Pepe's house in August of 2005, you didn't see
14 Chanry there, did you?

15 A. Yeah. I went there mostly in the day, during the daytime.

16 Q. When you were there, Chanry wasn't around?

17 A. I don't know because sometimes she might went to the market
18 or something. I don't know.

19 Q. Did you ever see her when you were at the house after
20 August of 2005?

21 A. I don't recall.

22 Q. Did you ever learn from your wife that Chanry had left her
23 husband's home?

24 MR. BROWN: Objection. Calls for hearsay, Your Honor.

25 THE COURT: I can't think of a non-hearsay purpose,

1 Mr. Lulejian.

2 MR. LULEJIAN: I'll withdraw the question.

3 Q. When you were at the house, did you see children there?

4 A. Sometime I did.

5 Q. Boys or girls?

6 A. Some girls, some boy.

7 Q. I'm going to show you what has been marked as Government
8 Exhibit No. 1008 and has been admitted into evidence.

9 Mr. De Montero, starting on the left-hand corner, did
10 you see this girl at the defendant's house when you were there?

11 A. No.

12 Q. The girl in the orange, did you see her at the defendant's
13 house when you were there?

14 A. I do not recognize their face.

15 Q. The girl in the green holding the dog, do you recognize her
16 as being present at the house when you were there?

17 A. Well, I just know that some girl, but I do not recognize
18 the face because I never did pay any attention.

19 Q. Looking at the girl here on the right, in the red holding
20 the flowers, did you see her at Mr. Pepe's house?

21 A. I don't recognize her.

22 Q. Looking at the girl who is kneeling here in the back, did
23 you see her at the house when you visited Mr. Pepe?

24 A. No.

25 Q. Do Chanry and Mr. Pepe have children?

1 A. No.

2 Q. Do you know if they have adopted children formally?

3 MR. BROWN: Objection. Relevance, Your Honor.

4 THE COURT: Sustained.

5 BY MR. LULEJIAN:

6 Q. Showing you now what has been marked as Government Exhibit
7 No. 1359.

8 Do you recognize the girl on the left as being at the
9 defendant's house when you visited him?

10 A. I don't remember. Like I said, I never pay any attention
11 and try to look at them because I went there just to discuss
12 some business.

13 Q. Showing you what has been marked as Government Exhibit
14 No. 1341, did you see this girl when you were at Mr. Pepe's
15 house?

16 A. I don't recognize her.

17 Q. Showing you now what has been admitted as Government
18 Exhibit 1332, do you recognize the girl at the lower end of the
19 couch as being at Mr. Pepe's house when you were there to visit?

20 A. Like I told you, that I did not pay any attention on
21 anybody was there. And I don't know whether it's just the
22 Vietnamese parent that just dropped them there, I don't know.

23 Q. Were you present in Cambodia for the Cambodian New Year in
24 2006?

25 A. Yes.

1 Q. And where did you -- did you celebrate the new year in Bang
2 Toum Pong Province?

3 A. My wife went.

4 Q. Did you go with your wife to Bang Toum Pong?

5 A. No, I did not.

6 Q. Do you know if Chanry was present at Bang Toum Pong for the
7 Cambodian New Year in 2006?

8 MR. GUNN: Objection, Your Honor. No personal
9 knowledge, no foundation.

10 THE COURT: Do you know, sir?

11 THE WITNESS: I never pay any attention.

12 BY MR. LULEJIAN:

13 Q. Do you know, though?

14 A. I don't know.

15 Q. Showing you what has been admitted as Government Exhibit
16 No. 1023.

17 Do you recognize the girl on the left as being someone
18 present at the defendant's house when you were there?

19 MR. BROWN: Your Honor, I am going to interpose a 403
20 objection to this line of questioning. The witness has already
21 stated --

22 THE COURT: Overruled.

23 MR. BROWN: Outside the scope.

24 THE COURT: Overruled.

25 THE WITNESS: I don't recall at all because I told

1 you, I never pay any attention.

2 BY MR. LULEJIAN:

3 Q. Showing you the girl in the middle between the woman and
4 the girl on the end, did you see her at defendant's house?

5 A. I don't recognize her.

6 Q. The woman who is standing next to the defendant, have you
7 seen her at the defendant's house?

8 A. When I went there, I saw the housekeeper brought some water
9 for me.

10 Q. My question, sir, is when you were at Mr. Pepe's house, did
11 you see this woman in Exhibit No. 1023 at the house?

12 A. Yes. She's the one that brought the water for me.

13 Q. Did you see this woman again after June 17th, 2006?

14 A. I saw had her in Prey Sar Prison.

15 Q. And you have seen her since that one visit in Prey Sar,
16 haven't you?

17 A. You mean after she was released?

18 Q. Yes, sir.

19 A. She asked for my help.

20 Q. So the answer is you have met her after she has been out of
21 jail?

22 A. Yes.

23 Q. How many times have you met with her since -- and for the
24 record, this is Kumlang -- since Kumlang has been released from
25 prison?

1 A. I saw her only once or twice, but I also saw her after the
2 Defense team arrive, want to get deposition.

3 Q. She doesn't live in Phnom Penh any more, does she?

4 A. When was that, did you want to know?

5 Q. Currently. Kumlang doesn't live near Phnom Penh any more,
6 does she?

7 A. Present time, yes, she's not.

8 Q. She currently lives near the Vietnam border, doesn't she?

9 A. Yes.

10 Q. When you saw her, you saw her up near the Vietnam border,
11 didn't you?

12 A. No. I never met her again over there.

13 Q. You testified a moment ago, sir, that you met her when the
14 Defense team came to Cambodia, didn't you?

15 MR. BROWN: Objection, Your Honor. Vague as to time.

16 THE COURT: He testified just a moment ago.

17 Overruled.

18 THE WITNESS: I met her in Phnom Penh.

19 MR. LULEJIAN: I am going to show you now what has
20 been marked as Government Exhibit No. 1009. It's been admitted.

21 Q. Do you recognize the girl in the yellow blouse as being
22 someone at the defendant's house when you visited?

23 A. I never recognize any one of them, as I told you.

24 Q. Did you see the woman in the beige blouse at the
25 defendant's house?

1 A. No. I never saw her there.

2 Q. Where did you see her, sir?

3 A. Who is she?

4 Q. Are you saying that you have never seen this woman before?

5 A. Well, from the picture in that screen, I don't think I do
6 know or ever seen her.

7 Q. In fact, you testified, when Mr. Brown asked you, that you
8 met her when she was at Prey Sar Prison, didn't you?

9 MR. BROWN: Objection, Your Honor. I don't think
10 there is a foundation as to who that person is.

11 THE COURT: Mr. Lulejian may have reason not to lay
12 one yet so I am going to allow him to proceed.

13 THE WITNESS: Well, the lady that I met at Prey Sar
14 Prison doesn't look like the one in this picture.

15 BY MR. LULEJIAN:

16 Q. Did the lady at Prey Sar Prison have a mother or
17 mother-in-law who you visited?

18 A. Are you talking about Ly Kim Eng?

19 Q. Yes.

20 A. Yes.

21 Q. I will represent to you that that is Ly Kim Eng.

22 A. If that's the case, the picture and the actual person that
23 I saw at the prison not the name.

24 Q. You met Ly Kim Eng at Prey Sar Prison on the day after
25 Mr. Pepe was arrested; isn't that right?

1 A. No. Months after.

2 Q. I thought you said that -- never mind.

3 I am going to show you now what has been marked as
4 Government's Exhibit 1032. It's been admitted.

5 Have you seen the woman in red when you visited the
6 defendant's house?

7 A. Well, I saw some fair girl but I don't know which is which.
8 Like I said, I never pay any attention on that.

9 Q. Have you ever seen that woman before, sir?

10 A. I don't think so.

11 Q. Has your friend, the defendant, told you about somebody by
12 the name of Basang?

13 A. What's the name?

14 Q. Basang or Sang?

15 A. Yes.

16 Q. Have you ever met Sang?

17 A. Before I never met her, only in the prison.

18 Q. The first time you met her was when she was in jail?

19 A. Yes.

20 Q. I will you now show you what has been marked as a
21 Government exhibit and admitted as 1002.

22 Have you seen the woman on the far left in the blue
23 blouse with the tan jacket?

24 MR. BROWN: Your Honor, objection.

25 THE COURT: Overruled.

1 THE WITNESS: The one on the left?

2 BY MR. LULEJIAN:

3 Q. Yes, sir.

4 A. The picture is not clear. I don't know.

5 Q. So you -- so you have never met Sang until she was in
6 prison; is that right?

7 A. That is correct.

8 Q. Mr. De Montero, since the defendant has been arrested, you
9 have spoken to him, haven't you?

10 A. Yes, I did.

11 Q. In fact, you speak with him fairly regularly on the
12 telephone, don't you?

13 A. Yes.

14 Q. And, in fact, you have talked over two dozen times between
15 August of 2007 and the spring of this year; isn't that right?

16 A. Yes.

17 Q. And when he calls you, you're often in Australia; isn't
18 that right?

19 A. Yes. After they extradite him to United States, I went
20 back to Australia.

21 Q. But you have gone back to Cambodia at the defendant's
22 request, haven't you?

23 A. No.

24 Q. You have gone back to Cambodia since the defendant's
25 request though; right?

1 A. No. The attorney request me to go back to Cambodia, not
2 Mr. Pepe.

3 Q. When you go to Cambodia, you do things that Mr. Pepe has
4 asked you to do, don't you?

5 A. No. The attorney that asked me to help.

6 Q. In fact, one of the things that you and Mr. Pepe talk about
7 quite frequently on the telephone is his desire to get the
8 girls, the victims in this case, out of the shelters and put
9 them back with their families; isn't that right?

10 A. No. It's her mother after they release her, she asked the
11 custody to be -- to return to her.

12 Q. I am going to state my question again, sir.

13 During your telephone calls with the defendant, the
14 two of you have talked about you working to reunite the victims
15 with their families and take them out of the shelters?

16 A. Yes.

17 Q. And, in fact --

18 A. At that time because of the mother ask me to help to
19 arrange or to do what I can to bring the kid out from there.

20 Q. In fact, Mr. Pepe had a special name for what he wanted you
21 to do, didn't he?

22 A. No. I don't know anything about that.

23 Q. Didn't he refer to your efforts to get the girls away from
24 the shelters as "the project"?

25 A. No. To get the kid out from the shelter is the mother's

1 idea. She beg me a few times.

2 Q. Which mother?

3 A. Kumlang.

4 Q. So just one mother?

5 A. The other one, the organization never allowed me to see
6 them. And the organization never allowed the other mother to
7 meet with the attorney, Defense attorney.

8 Q. So the answer to my question is only one mother, Kumlang,
9 asked you to get her daughters?

10 A. Yes.

11 Q. But the two of you talked about the importance of getting
12 L.K.xxx reunited with her mother; isn't that right?

13 A. What about L.K.xxx? I do not quite follow.

14 Q. That's Ly Kim Eng's daughter, isn't it?

15 A. Yeah. I think the mother have the right to have her kid
16 back.

17 Q. My question was Mr. Pepe and you talked about reuniting
18 L.K.xxx with her family or taking her out of the shelter?

19 A. Well, I did arrange with the human rights organization to
20 have those three mother released out of the prison.

21 Q. So you're the one who orchestrated the mothers being
22 released from the prison?

23 MR. BROWN: Objection, Your Honor, as to orchestrated.

24 403.

25 THE COURT: Why don't you use another word.

1 BY MR. LULEJIAN:

2 Q. You're the one who helped get the mothers released from
3 prison?

4 A. Yes. As is part of my job as the Vice Chair of the Human
5 Rights Organization before, that is my job to help anybody that
6 need help.

7 Q. Part of your conversations with Mr. Pepe -- let me rephrase
8 that.

9 When you call Mr. Pepe, those calls are recorded,
10 aren't they?

11 MR. BROWN: As to Mr. De Montero calling Mr. Pepe?

12 MR. LULEJIAN: I'll rephrase it.

13 THE COURT: Thank you.

14 BY MR. LULEJIAN:

15 Q. When Mr. Pepe needs to speak with you, he has to call you;
16 is that right?

17 A. Yes.

18 Q. And those telephone calls are recorded?

19 A. Yes. I think so.

20 Q. And, in fact, during your conversations with Mr. Pepe, he's
21 told you to be very careful what you say because the Government
22 may be listening?

23 A. I never pay any attention on that part because I don't have
24 anything to hide from the Government.

25 Q. Mr. De Montero, isn't it -- Mr. De Montero, Mr. Pepe's very

1 concerned about the victims in this case traveling to the
2 United States to testify against him; isn't that correct?

3 MR. BROWN: Objection, Your Honor. Calls for
4 speculation. Lack of personal knowledge.

5 THE COURT: It sounds like it may be, depending on
6 what you have. Either rephrase it or --

7 MR. LULEJIAN: I'll rephrase the question, Your Honor.

8 Q. Mr. De Montero, Mr. Pepe has told you that he is concerned
9 about the victims coming to the United States and testifying
10 against him; isn't that right?

11 A. No. I never heard of that.

12 Q. In fact, Mr. Pepe has been pushing you very hard to reunite
13 the victims with their families and take them out of the
14 shelters; isn't that right?

15 A. No. I was in Australia. I cannot do anything.

16 Q. In fact, on October 11th of last year, Mr. Pepe told you,
17 quote, in referring to the girls, that's going to be the key for
18 my opponent's case; isn't that right?

19 A. I don't remember.

20 Q. In fact, in other telephone calls, Mr. Pepe talked about
21 having money sent to Chanry for travel expenses related to the
22 girls, didn't he?

23 A. I don't recall because the conversation on the phone I
24 never keep that in mind all the time.

25 Q. In fact, Chanry has been receiving large sums of money from

1 the defendant while he's incarcerated?

2 MR. BROWN: Speculation, lack of personal knowledge,
3 Your Honor, no foundation.

4 THE COURT: Can you lay a foundation, Mr. Lulejian?

5 BY MR. LULEJIAN:

6 Q. On September 28th of last year, Mr. Pepe told you, quote, I
7 sent Chanry a bunch of money, I guess about a month ago; is that
8 right?

9 A. I don't recall.

10 Q. In fact, right after that, Mr. Pepe says, "And I just sent
11 some more to cover expenses that you are able to travel"; isn't
12 that right?

13 A. I don't recall.

14 Q. And he goes on to say there is money to cover the expenses?

15 A. I don't recall.

16 Q. When you traveled to Cambodia to help out your
17 brother-in-law, who pays for that trip?

18 MR. BROWN: Objection, Your Honor. Beyond the scope.

19 THE COURT: Overruled.

20 THE WITNESS: Chanry send me the money.

21 BY MR. LULEJIAN:

22 Q. Do you know what Chanry does for a living?

23 A. I never ask.

24 Q. In fact, the family is not very wealthy, are they?

25 A. I know that.

1 Q. In fact, Chanry and her sisters had to do some pretty
2 deplorable things in order to make money, haven't they?

3 MR. BROWN: Objection. 403, Your Honor.

4 THE COURT: That sounds like we're pushing the
5 envelope.

6 MR. LULEJIAN: I am going to stop right there,
7 Your Honor.

8 Q. What was the answer, sir?

9 A. What was the question?

10 Q. The question was, in fact, Chanry and her sisters --

11 MR. BROWN: I am going to object.

12 THE COURT: I am not going to allow the question.

13 MR. LULEJIAN: I'll move on then.

14 Q. Mr. De Montero, a few moments ago you said that you
15 couldn't remember whether the defendant told you about sending
16 money to Chanry; is that right?

17 A. That's correct.

18 Q. If you saw a transcript of that call, would it help refresh
19 your recollection?

20 A. You're going to play the tape?

21 Q. I have a transcript that is the writing of what has been on
22 the call.

23 A. Yeah. I can look.

24 THE COURT: Do you read English, sir?

25 THE WITNESS: Just some.

1 MR. BROWN: I'm sorry, Your Honor. I don't think the
2 Defense has seen a copy of this transcript.

3 THE COURT: All right. If you have any trouble
4 reading the portions of the transcript to which Mr. Lulejian
5 directs you, I will have the interpreter interpret it for you,
6 so just let us know.

7 MR. LULEJIAN: May I approach, Your Honor?

8 THE COURT: Show a copy to . . .

9 (Mr. Lulejian and Mr. Brown confer off the record.)

10 MR. BROWN: Your Honor, may we briefly approach?

11 (Sidebar conference commenced)

12 MR. BROWN: Your Honor, the Government intends on
13 impeaching Mr. De Montero -- the Government intends on
14 impeaching Mr. De Montero with a transcript of a recorded
15 conversation that we have got the conversation but we don't have
16 the Government's transcript and I think it puts us in a little
17 awkward position. I am not even going -- going to be able to
18 put this in context. I don't have a copy.

19 THE COURT: Do you have the tape?

20 MS. DONAHUE: We turned over the tape months ago.

21 MR. GUNN: Your Honor, the transcript --

22 THE COURT: He is just refreshing his recollection.

23 MR. GUNN: The transcript should have been --

24 THE COURT: He is refreshing his recollection.

25 MR. GUNN: We are complaining about Rule 16 --

1 THE COURT: I understand. Overruled.

2 (Sidebar conference ended)

3 MR. BROWN: Your Honor, I am just asking for a copy of
4 what the witness --

5 THE COURT: Mr. Brown?

6 (Witness reviews document)

7 THE COURT: Don't speak.

8 THE INTERPRETER: I just said that this is the
9 conversation on the phone --

10 THE COURT: You are only interpreting what we say;
11 you're not assisting the witness.

12 Have you had an opportunity to read that, sir?

13 THE WITNESS: Yes.

14 THE COURT: Were you able to read it, even though it's
15 in English?

16 THE WITNESS: Yes.

17 THE COURT: Mr. Lulejian, you may ask your next
18 question.

19 BY MR. LULEJIAN:

20 Q. May I have the transcript, sir?

21 Having read the portion of the transcript that was
22 handed to you, is your memory now refreshed as to what you and
23 Mr. Pepe discussed?

24 A. Well, at the time because that the Defense attorney --

25 THE COURT: Sir, the question is do you now remember

1 the conversation?

2 THE WITNESS: Yes.

3 BY MR. LULEJIAN:

4 Q. And during that conversation, Mr. Pepe told you he had sent
5 Chanry a bunch of money, didn't he?

6 A. Yes.

7 Q. And he said that he sent -- he just sent some more to cover
8 expenses, didn't he?

9 A. Yeah. According to the transcript.

10 Q. And on that telephone call on September 28th, 2007,
11 Mr. Pepe also told you that you if you were able to travel,
12 there is money to cover the expenses; isn't that right?

13 A. Yes. According to the transcript.

14 Q. And your expenses to Cambodia are paid by Chanry; isn't
15 that right?

16 A. Yes.

17 Q. And Chanry gets money from her husband, Michael Pepe,
18 doesn't she?

19 A. She never told me where she got it from.

20 Q. During one of your conversations with Michael Pepe, you
21 told him that you were going to get a lawyer to see a judge to
22 get an order to get the kids back with the parents; isn't that
23 right?

24 A. Well, that is just the continuance from the time that the
25 three lady has been released, it's -- now it's for them to

1 reunite with their children.

2 Q. The answer is you said that, didn't you?

3 A. Yes, I did.

4 Q. And Michael told -- the defendant told you, "But there's
5 seven of them now"; isn't that right?

6 A. I don't recall.

7 Q. Would seeing a transcript refresh your recollection, sir?

8 A. If you have it in the transcript, maybe it is. I don't
9 know right now.

10 MR. LULEJIAN: May I approach, Your Honor?

11 THE COURT: After you show Counsel.

12 MR. LULEJIAN: Of course.

13 (Mr. Lulejian shows Defense counsel document)

14 MR. LULEJIAN: May I approach, Your Honor?

15 THE COURT: Yes.

16 MR. BROWN: Your Honor, could we have a date and time
17 for a point of reference with respect to that?

18 THE COURT: Mr. Lulejian?

19 MR. LULEJIAN: As soon as I get it back -- I'm sorry.
20 December 30? December 30th, 2007.

21 THE COURT: Thank you.

22 (Witness reviews document)

23 BY MR. LULEJIAN:

24 Q. Are you done, sir?

25 THE COURT: Are you finished reading, sir?

1 THE WITNESS: Yes.

2 THE COURT: You may take that back, Mr. Lulejian.

3 MR. LULEJIAN: Thank you very much, Your Honor.

4 Q. Mr. De Montero, after you told the defendant that you were
5 going to contact the judge to get an order for the kids to go
6 back with their parents, he replied that there's seven of them
7 now, isn't that right?

8 A. He probably mentioned seven, but I never pay any attention.
9 My concentration was on the four girl.

10 Q. Well, the next thing you said to him was, "Yeah, that's
11 what I heard"; isn't that right?

12 A. That's because the attorney told me. But I never consider
13 as seven people.

14 Q. You later go on to talk about trying to get S.R.xxx and
15 S.S.xxx out of the shelter so they could be reunited with
16 Kumlang; isn't that right?

17 A. Yes.

18 Q. And you also talked about getting L.K.xxx, Ly Kim Eng's
19 daughter, out of the shelter and back with her parents?

20 A. I do not have any discussion but just probably did mention
21 because L.K.xxx, the organization never let me see her or her
22 mother to see her.

23 Q. In fact, Mr. Pepe was very concerned about L.K.xxx coming
24 to the United States to testify, wasn't he?

25 MR. BROWN: Objection. Form of the question, lack of

1 personal knowledge.

2 THE COURT: Do you want to rephrase your question,
3 Mr. Lulejian.

4 BY MR. LULEJIAN:

5 Q. Mr. Pepe told you he was very concerned about L.K.xxx in
6 particular coming to testify at this trial, wasn't he?

7 A. I never heard that.

8 Q. Mr. De Montero, going back to the September 28th call,
9 that's the one that talks about your expenses being paid by
10 Mr. Pepe through his wife, during that call, Mr. Pepe said, "So
11 I guess" -- I'm sorry -- "So what it comes down to, I guess, the
12 sequence. One thing is the girls, if they're with their
13 families, are not coming out here, then there is no case."

14 A. I don't recall. He might said. I don't know.

15 Q. Mr. De Montero, would you like me to show you the
16 transcript again to help refresh your recollection?

17 A. Well, if it's in the transcript, probably it is. I don't
18 remember everything.

19 Q. In fact, during that telephone call, Mr. Pepe was very
20 critical of a woman lawyer who was working on the case, wasn't
21 he? And, in fact, even though he praised her, he was concerned
22 that she doesn't know how to get things done; isn't that right?

23 A. I don't recall. I never saw the ladies attorney and I was
24 far away. I don't know.

25 Q. In fact the one thing that Mr. Pepe did tell you was

1 clearly the family's together, then there is no case, it all
2 goes away; isn't that right?

3 A. I don't recall if he mentioned that. Probably he did. I
4 don't know.

5 Q. Mr. Pepe conveyed to you during your telephone
6 conversations that if there were no girls, there'd be no case,
7 didn't he?

8 A. I don't recall, but to me I don't think you know what is
9 the nature of that -- that remark.

10 MR. LULEJIAN: I have no further questions,
11 Your Honor.

12 THE COURT: Mr. Brown?

13 REDIRECT EXAMINATION

14 BY MR. BROWN:

15 Q. Mr. De Montero, last fall, the Defense, Pepe's defense
16 team, contacted you; correct?

17 A. Yes.

18 Q. And that was with respect to having you help the Defense
19 team -- as a guide for the Defense team in Cambodia; right?

20 A. Yes.

21 Q. You were living in Australia?

22 A. Yes.

23 Q. And you were told that we had never been to Cambodia; isn't
24 that true?

25 A. Yes.

1 Q. And we needed someone and we didn't have any contacts in
2 Cambodia whatsoever; isn't that true?

3 A. Yes.

4 Q. We didn't have an office in Cambodia?

5 A. Yes.

6 Q. We didn't have agents in Cambodia?

7 A. Yes.

8 Q. We didn't have any law enforcement contacts in Cambodia?

9 A. Yes.

10 Q. It was a foreign land to us; right?

11 A. Yes.

12 Q. And we didn't know anyone there?

13 A. Yes.

14 Q. And the Defense team asked if as a courtesy you could help
15 be an informal guide; isn't that true? And to help us make
16 contact to investigate this case; is that fair to say?

17 A. Yes.

18 Q. Because Cambodia is thousands of miles away from the
19 United States?

20 A. Yes.

21 Q. And isn't it true that as a courtesy, Mr. Pepe helped pay
22 your travel expenses? Isn't that what those conversations were
23 about?

24 A. Yes.

25 Q. And what Mr. Pepe told you was that his defense team had

1 hired a Cambodian attorney who wasn't very helpful in terms of
2 gathering information; isn't that true?

3 A. Yes.

4 Q. And to put that conversation in context, what Mr. Pepe told
5 you was, "If not for your help, my defense team would not have
6 been able to get anything done in Cambodia because the lady that
7 they hired wasn't worth a damn"?

8 A. Yes.

9 Q. With respect to -- and you met the Defense team in Cambodia
10 during our investigation; correct?

11 A. Yes.

12 Q. That was in November of last year; right?

13 A. Yes.

14 Q. And you met us again in February of this year when we had
15 to return for depositions?

16 A. February '08? I don't think so.

17 Q. I apologize. I misspoke. I misspoke.

18 You weren't present in February, were you?

19 A. That is correct.

20 Q. In the course of -- did you learn that the girls'
21 mothers -- and I'm referring to Ly Kim Eng and Kumlang -- did
22 you learn that they were upset because they had not been able to
23 see their daughters on a regular basis?

24 A. Yes. And also before I came here, the parent also express
25 to me how unhappy they were that they transport the children

1 that they never met.

2 And S.S.xxx, she want to talk to that kid. The mom,
3 S.S.xxx's and L.K.xxx's mother, want to speak to them while they
4 here.

5 Q. So just to make things clear, Mr. De Montero, when Mr. Pepe
6 was arrested in 2006, the girls' parents were also arrested;
7 right?

8 A. At the time of the arrest of Michael, the mother has not
9 been arrested yet.

10 Q. But at some point they were arrested?

11 A. They trick her, they told them, said that come to visit
12 your kid. Then they just grabbed them.

13 MR. LULEJIAN: Objection, Your Honor. Foundation.

14 THE COURT: Sustained. Would you like to lay a
15 foundation.

16 MR. BROWN: Yes, Your Honor.

17 Q. How do you know what happened to the parents of the girls?

18 A. At what time period?

19 Q. After Mr. Pepe's arrest.

20 A. When I went to Prey Sar prison when I met them.

21 Q. And the parents asked you for help specifically; isn't that
22 true?

23 A. Yes. Over and over again asked me to help.

24 Q. And you indicated on cross-examination that you were able
25 to contact the human rights people in Cambodia to help the

1 parents get released?

2 A. Yes. Because of that, that's why I request the Human
3 Rights Committee help in order to get them released, three of
4 them.

5 Q. And do you know when the parents were released if their
6 children were returned to them?

7 A. According to the court document, they were released and
8 asked them to return the children to them, but the organization
9 never did.

10 Q. What organization are you referring to?

11 A. The organization that took those girls away, they never
12 mention the group's name.

13 Q. And you still speak to the parents, correct?

14 A. Yes. Because it's still want to talk to me, ask me to help
15 them.

16 Q. And the parents are still seeking your help in getting the
17 children returned from the organizations that they have been at
18 since 2006?

19 A. Yes.

20 Q. Just briefly and I'll wrap it up, Your Honor.

21 Mr. De Montero, there are some questions about
22 Mr. Pepe's wife and I just want to have you identify a couple of
23 photos. They are part of Defense Exhibits 380. If you could
24 show No. 20.

25 Okay, Mr. De Montero, this is the series of

1 photographs from the disabled children's place. Do you see a
2 woman sitting behind Michael Pepe in a white shirt in the center
3 of the picture?

4 A. Yes.

5 Q. And if Mr. Gunn could just put the arrow -- okay.

6 Do you know who that person is, Mr. De Montero?

7 A. That's Chanry.

8 Q. And who is Chanry?

9 A. Mr. Pepe's wife.

10 Q. And how old is Chanry, if you know?

11 A. I'm not sure. 22, -3, -4. I don't know.

12 Q. And there is a little boy in the foreground of that
13 picture.

14 A. That's the one right there?

15 Q. Yes. Do you know who that is?

16 A. The white shirt?

17 Q. Yes.

18 A. Jason. Jason De Montero.

19 Q. Who is Jason De Montero?

20 A. My son.

21 Q. And do you know who the person is that's -- it looks like
22 playing with his hair?

23 A. Lee Da Sang.

24 MR. BROWN: Your Honor, may I have one moment?

25 THE COURT: Yes.

1 (Mr. Brown confers with Mr. Gunn and the defendant off the
2 record)

3 MR. BROWN: Your Honor, no further questions. Thank
4 you.

5 THE COURT: Mr. Lulejian?

6 MR. LULEJIAN: Yes, Your Honor.

7 RECROSS-EXAMINATION

8 BY MR. LULEJIAN:

9 Q. Mr. De Montero, when you went to Cambodia to help the
10 Defense team travel around the country, they didn't --

11 MR. BROWN: Objection, Your Honor, misstates the
12 evidence.

13 MR. LULEJIAN: I will rephrase the question.

14 THE COURT: Thank you.

15 BY MR. LULEJIAN:

16 Q. You testified a moment ago that you went to Cambodia to
17 assist Mr. Pepe's defense team throughout the country.

18 MR. BROWN: Your Honor, misstates the testimony with
19 respect to "throughout the country."

20 THE COURT: Just --

21 MR. LULEJIAN: I will rephrase it.

22 THE COURT: Thank you.

23 MR. LULEJIAN: Sorry, Your Honor.

24 Q. Mr. De Montero, you testified a few moments ago that you
25 went to Cambodia to assist Mr. Pepe's lawyers when they were in

1 Cambodia; is that right?

2 A. Yes.

3 Q. And as part of your efforts to assist them -- let me
4 rephrase that.

5 Mr. Pepe's American defense team didn't tell you to
6 reunite the victims with their families, to take them out of the
7 shelters, did they?

8 A. That is correct.

9 Q. Mr. Gunn didn't tell you to do that?

10 A. No.

11 Q. Mr. Brown didn't tell you to do that?

12 A. No.

13 Q. In fact, the one person who told you that he wanted to
14 reunite the children with their families so they didn't come to
15 the United States to testify was the defendant, Michael Pepe;
16 isn't that right?

17 A. No. I also want them to be united with the parents.

18 Q. And that's because of your commitment to human rights; is
19 that right?

20 A. Yes.

21 Q. In fact, human rights are a big problem in Cambodia, aren't
22 they?

23 A. Yes.

24 Q. And you dedicated yourself to help the Cambodian people
25 with those human rights problems; is that correct?

MR. BROWN: Objection. Argumentative, Your Honor.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. LULEJIAN:

Q. In fact, one of the problems, human rights problems in Cambodia, is the trafficking of persons; isn't that right?

MR. BROWN: Objection. Beyond the scope.

THE COURT: Mr. Lulejian.

MR. LULEJIAN: I will narrow it, Your Honor.

Q. One of the problems of human rights abuse in Cambodia is the sexual exploitation of children; isn't that right?

MR. GUNN: Objection.

THE COURT: I don't think that helped, Mr. Lulejian. I think you're done.

BY MR. LULEJIAN:

Q. Let me try one last question, then. Two, actually.

You testified a second ago that you contacted the mothers because you were concerned -- I'm sorry.

You contacted human rights organizations on behalf of the mothers in this case; is that right?

A. Yes.

Q. What human rights organization did you contact for S.R.xxx in this case?

A. Cambodian Human Rights Committee.

Q. I will withdraw the question and rephrase it.

1 Did you contact any human rights committees to help
2 the victims in this case?

3 A. Yes.

4 Q. Which committee?

5 A. The same one, Cambodian Human Rights Committee.

6 Q. And by victims -- and by victims, you're talking about the
7 children who were sexually abused?

8 A. Yes.

9 Q. When did you contact the committee?

10 A. The same time when I request for help for the mother.

11 Q. And what steps have you taken to help the victims in this
12 case?

13 MR. BROWN: Your Honor, I am just going to object to
14 assume facts not in evidence.

15 THE COURT: It doesn't assume anything. It's a
16 question.

17 MR. BROWN: With respect to victims, Your Honor.

18 THE COURT: Overruled.

19 THE WITNESS: Cambodian Human Rights Committee, they
20 try to contact the children but the other organization refuse
21 and never even told them where the children were.

22 BY MR. LULEJIAN:

23 Q. In fact, those other organizations you're talking about,
24 the non-governmental organizations, they work with the Cambodian
25 government to take care of children that are the subject of

1 sexual abuse, aren't they?

2 A. To me, those group is just group that exist trying to
3 making money for the Government. For the organizations.

4 Q. You were a senior member of -- in the -- Under Secretary of
5 the Cambodian government; isn't that right?

6 A. I'm the Secretary of State of education.

7 Q. But even in that capacity, you were privy to what was going
8 on in the human rights realm, weren't you?

9 A. Yeah. I was the Vice Chair of the Cambodian Human Rights
10 committee since 1997.

11 Q. And --

12 A. '98. '97 and '98.

13 Q. And as Vice Chair of the Cambodian Human Rights Committee,
14 you would know that the infrastructure in Cambodia relies on the
15 non-governmental organizations to help with the problem of
16 abused children; isn't that right?

17 A. Because I am in the Government, I also know they do help.
18 At the same time they also gave the Government a headache.

19 Q. The fact is that the non-governmental organizations help
20 rescue children, don't they?

21 A. I don't see a whole lot of result from that.

22 Q. And the non-governmental organizations work hand-in-hand
23 with the police and the Government to take care of the children
24 once they have been rescued; isn't that right?

25 A. Yes, they do, but at the same time they neglect to obey the

1 rule and the decisions of the Cambodian judicial court to allow
2 the court to order and they never did listen.

3 Q. And many of the children who are at these non-governmental
4 organizations are there because their parents sold them into
5 sexual servitude; isn't that right?

6 A. It's not the whole truth.

7 Q. In fact, what you did when dealing with human rights is
8 rather -- let me rephrase that.

9 So let me ask you again, sir, what did you do to help
10 the victims in this case with respect to the human rights
11 committees?

12 A. In Cambodia, my main concern is to help them build up the
13 human right and to help the parent employ. If the parent get
14 employed, have a job, there will be less problem.

15 Q. What did you do --

16 THE COURT: Wrap it up, Mr. Lulejian.

17 MR. LULEJIAN: I have no further questions,
18 Your Honor.

19 THE COURT: Thank you.

20 MR. BROWN: No further questions, Your Honor.

21 THE COURT: Thank you, sir, you're excused.

22 Ladies and gentlemen, don't talk about the case, don't
23 form or express any opinions about the case until it's finally
24 submitted to you. You are ordered to return tomorrow at 8:00
25 a.m. and you are ordered to have a good evening.

(Jury Out)

THE COURT: You may be seated.

Why are you guys here?

MR. SAUNDERS: If we could be let into the courtroom next door, we would clear out our remaining carts. We got a call from Mr. Pierson.

THE COURT: Steve, can you go next door -- the CSO is here. Thank you.

Mr. Lulejian, if you plan on playing any of those tapes -- I don't know that you do -- but certainly you should have transcripts for the jurors and Counsel.

MR. LULEJIAN: Yes, Your Honor.

MR. GUNN: Your Honor, I had an issue about that also. There can be arguments back and forth, it seems to me, about whether a transcript is not a Rule 16 or is Rule 16 even when the other side already has a tape.

My position is it's a written record and still disclosable. I can see the arguments the other way. I don't see any justification for us not getting a copy of a document that is shown to the witness. I mean, it seems to me if something is shown to a witness to refresh recollection, the other side ought to have a copy of it.

If Counsel doesn't want -- thinks it's entitled to and does not want to disclose that up front, you know, under Rule 16 then they can try to make that argument, I suppose. But if

1 something gets shown to a witness and used -- even if it's only
2 for refreshing, the other side ought to get a copy of it.

3 THE COURT: You can refresh somebody's recollection
4 with a plate of spaghetti, as my evidence professor used to say.
5 And while I certainly would have preferred that there had been
6 copies here for both the Court and opposing counsel, I don't
7 consider it a violation. Even if it were, it would be so
8 inconsequential in light of the fact that you had the tapes,
9 that I would not have done anything different. And I don't know
10 whether you had your own transcripts or not. But that was the
11 basis of my finding. It was totally inconsequential. It was
12 shown to you before it was presented to the witness. He wasn't
13 asked to read from it. There is just simply no prejudice at
14 all.

15 I assume there's nothing more that is going to be done
16 along those lines, and if there is, I expect that even though
17 courtesies might not have been extended by the Defense, you are
18 two different sides here and you will in future extend all
19 appropriate courtesies to the defendant, whether he is legally
20 entitled to them or not.

21 MR. LULEJIAN: Your Honor, we would be happy to do
22 that. We had no idea that they were going to open the door.
23 And had we known that or thought it through, we would have
24 brought copies. We'll make sure that we have extra copies, just
25 in case, next time.

1 MR. GUNN: For the record, Your Honor, every time I
2 have used a document with the witness, I make sure and have four
3 copies and I have given one to the Government so -- and the same
4 for Mr. Brown, I believe.

5 THE COURT: I understand.

6 All right. What are we doing tomorrow?

7 MR. GUNN: I was sort of the person keeping track of
8 the witnesses. We have four or five more witnesses that we
9 think -- non-expert witnesses who we think will be relatively
10 short, though we thought Mr. De Montero would be short, too.
11 But I think it's more likely to be the case with these
12 witnesses.

13 We have Dr. Maloney. I'm going to decide this evening
14 about whether to bring in Dr. Bennett. And then we have the
15 deposition, which I am told is four hours.

16 THE COURT: We have at least a full day tomorrow.

17 MR. GUNN: Yes.

18 And one other thing, Your Honor. We will probably
19 seek to play some excerpts and have transcript excerpts for the
20 jury of some portions of the interview tapes that we think show
21 interview technique problems or suggestiveness issue and things
22 like that. So probably about -- Mr. Brown is handling that. I
23 don't know if he has an idea about how much time. Maybe half an
24 hour for that. I think we have a full day.

25 THE COURT: For use in connection with the expert?

1 MR. GUNN: No, I think offered as independent
2 evidence. The Government has agreed that we don't need to have
3 the translator testify. We are just going to stipulate to the
4 accuracy of the transcript and the tapes and we will play them
5 for jury. The jury will have them -- the jury will have a copy
6 of the transcript to follow along with the excerpt.

7 MR. LULEJIAN: One other thing, Your Honor. There has
8 been some discussion about -- and I think it's going to be in
9 some of the transcripts -- about the Cambodian zodiac for
10 purposes of aging.

11 We prepared a request for judicial notice for the
12 Court. There is no need to rule on it today. We just wanted to
13 bring it to the Court's attention.

14 THE COURT: When was it given to the Defense?

15 MR. LULEJIAN: I believe I gave it to them about a
16 week ago.

17 MR. GUNN: We have no objection to it.

18 THE COURT: All right. Then you will want me to
19 advise the jury that I am taking judicial notice of these facts?

20 MR. LULEJIAN: Yes, Your Honor.

21 THE COURT: So we need to add a judicial notice
22 instruction to the jury instructions.

23 MR. LULEJIAN: Thank you.

24 THE COURT: Ms. Donahue?

25 MS. DONAHUE: Regarding the -- the transcripts that

1 Mr. Gunn was referring to are the transcripts of the interviews
2 of the victims, and we told him it's the Government's position
3 he certainly does not need to call the interpreter to say this
4 is an accurate interpretation from the Vietnamese or from Khmai.

5 I anticipate that we will have instructions regarding
6 hearsay depending -- I don't know what tapes the Defense seeks
7 to play but what we stipulated away was putting an interpreter
8 to say it's accurate, but we certainly haven't entered into an
9 agreement as to which portions are admissible. I am happy to
10 work with counsel to see if we can do that. But that is sort of
11 where we are with that.

12 Secondly, in light of the fact that we haven't even
13 started the Kumlang depo -- even if we can agree to limit it --
14 I don't imagine there is any way we are going to get to our
15 rebuttal case tomorrow in light of the number of hours alone it
16 takes to play the depo. So I think I may tell my doctor she can
17 go to her graduation tomorrow and be here Tuesday.

18 THE COURT: It sounds even if you cut it down so it's
19 three hours that we've got a substantial portion of the day
20 taken up, so I think that makes sense. We will be wrapping up
21 on Tuesday hopefully.

22 MR. GUNN: I am going to be hesitant to sort of at
23 this last minute try to adjust the transcript.

24 THE COURT: Well, it is the Government that has the
25 transcript and if the Government wants to take out the

1 Government's questions, especially in light of what I saw -- I
2 would have cut out so much of that on my own if I had looked at
3 it other than I was only, unfortunately, focusing on the things
4 to which you made specific objections, but if those questions
5 had been asked in court, even without the objection of the other
6 side, I would have made, as I said, and sustained my own 403
7 objection because -- and it's just excruciating. So based on my
8 power to control the proceedings, if the Government -- but I
9 mean, you can't take out anything for which the Defense then
10 builds on it in its further questioning. So I'm not sure if
11 it's really worth the time it would take you while you're, you
12 know -- that may be best for the next trial to do that.

13 MR. GUNN: I am thinking even if we didn't build on it
14 in questioning, we might not have done redirect because it was
15 in the Government -- I will flag the Court the basic reasons we
16 are using the excerpts will be one of two things. I don't think
17 there is going to be any hearsay objection. There might be a
18 limiting instruction --

19 THE COURT: That is what I was going to suggest.
20 First of all, you need to let the Government know -- whenever
21 you are done with this tonight, if you just email them whatever
22 the excerpts are -- whatever, see if you can agree on a limiting
23 instruction. I do think for all of the reasons I have explained
24 before that the Defense is going to be allowed substantial
25 leeway in showing the videotapes of the interviews, for obvious

1 reasons. And so if there's some portions of them that otherwise
2 wouldn't be admissible and you can come up with the limiting
3 instruction, then I think that's the best way to handle it.

4 MR. GUNN: Frankly, most of the hearsay content in
5 there to the extent it's for the truth, is damning to the
6 Defense. But of course --

7 THE COURT: I assume so.

8 MR. GUNN: -- we need it in to let the jury see some
9 things for other reasons.

10 THE COURT: Yes. And you really don't -- I don't
11 know, maybe it's just me, Mr. Brown, but you really don't want
12 to state in open court that use of the word victims is an
13 assumption not supported by the evidence. Because I had to bite
14 my tongue. So just not --

15 MR. BROWN: Understood, Your Honor.

16 THE COURT: Let's just address a few of my questions.
17 I think they are easy ones on the instruction. There is one
18 instruction that has three aspects to it. A witness who
19 received immunity, admitted being an accomplice and was
20 convicted of a crime --

21 MR. GUNN: I'm sorry. Can I get my copy of the
22 instructions? I am a little discombobulated. All right.

23 THE COURT: It's on Page 11 of what I gave you. And
24 the question at the bottom of that page is whether the next
25 instruction is necessary. It seems duplicative.

1 MS. DONAHUE: It is duplicative, Your Honor.

2 THE COURT: Except for the fact that 11, as you
3 presented it, says view the testimony with greater caution, and
4 12 -- and I didn't look at this as correct transcription of the
5 Ninth Circuit instruction says with great caution which is
6 different from greater caution. I don't know if it's better or
7 worse but it's different.

8 MS. DONAHUE: I looked to see if the Ninth Circuit
9 requires or both instructions given under the circumstances.
10 It -- it recommends sort of each is recommended independently,
11 but not in conjunction, so I think the answer to your question
12 is that the second instruction is not necessary.

13 MR. GUNN: I'm a little -- what I think we -- I guess
14 I'm getting mixed up about which is first and --

15 THE COURT: 11 is the first one which has all three
16 categories.

17 MR. GUNN: Okay. Thank you. I think what I -- what I
18 was going to propose to the Court is that we have an instruction
19 with focusing on the one with three categories. We have an
20 instruction with the first and second category and then we have
21 your Page No. 12 instruction, which basically covers the third
22 category.

23 THE COURT: Is that a correct -- did you type that
24 correctly, Ms. Donahue, or whoever? Is there a --

25 MS. DONAHUE: The greater caution?

1 THE COURT: Yes.

2 MS. DONAHUE: Yes.

3 THE COURT: That's kind of bizarre.

4 MS. DONAHUE: But the instruction with three
5 categories adequately -- I mean, covers the subject.

6 MR. GUNN: The reason I like them broken out,
7 Your Honor, is convicted of a crime has two aspect issues
8 involved in it. One is consider the testimony with caution.
9 The other is don't assume something about that as far as the
10 defendant being guilty; whereas, the first two categories are
11 just about being cautious about the testimony. So I think
12 you -- that's why I think they are appropriately broken out.

13 MS. DONAHUE: The witness who has pleaded guilty,
14 Your Honor, in this case would be the witness who has been
15 convicted. It says -- because it's one category is you should
16 consider this witness's testimony with great caution, giving it
17 the weight you feel it deserves.

18 THE COURT: But that instruction refers to a plea?

19 MS. DONAHUE: Its -- it says witness who has pleaded
20 guilty. So I altered it in this case because she didn't plead
21 guilty, she was convicted by a court.

22 THE COURT: So it's not really the instruction that
23 applies. The one that applies is in the multiple --

24 MS. DONAHUE: Yes.

25 THE COURT: Well, I would give one instruction or

1 three. I'm not going to lump two and then the other one
2 separately. If you want it broken up --

3 MR. GUNN: You mean one on immunity and one on
4 accomplice and one on -- that would be fine. That certainly
5 works.

6 MS. DONAHUE: That's fine.

7 THE COURT: Okay. And then I proposed or at least
8 gave you a copy of the instruction relating to the deposition of
9 a witness that I already modified to some degree. And I was
10 thinking that we might add some language about -- because there
11 were so many objections that were just sort of floating out
12 there on both sides so I don't think inured to anybody's benefit
13 or detriment but something about ignoring the objections or the
14 Court has already considered the objections or whatever you can
15 agree to is fine with me.

16 Any comments from anybody?

17 MS. DONAHUE: I think a statement that the Court has
18 ruled on the objections and that the jury should not give them
19 any consideration is the appropriate instruction.

20 MR. GUNN: Except in some instances the objections
21 were withdrawn. Maybe the Court could say either the Court has
22 ruled on the objection or the objections were withdrawn and so
23 the jury should not place any weight on them or something.

24 THE COURT: How about just the jury should not place
25 any weight on the objections?

1 MS. DONAHUE: That's fine.

2 MR. GUNN: That's fine. Maybe some -- does the Ninth
3 Circuit have any language on an instruction about attorneys have
4 an obligation to object and --

5 MS. DONAHUE: That's in --

6 THE COURT: I've already given that once. I don't
7 know if it's in the later ones.

8 MS. DONAHUE: Yes, it's in there.

9 MR. GUNN: Right.

10 THE COURT: So you think that's enough or do you want
11 to add something here?

12 MR. GUNN: You mean in the language we just talked
13 about that they shouldn't --

14 THE COURT: Well, the language is at Page 6.

15 MR. GUNN: Oh, right. I would add something to your
16 deposition such as we just went over.

17 THE COURT: I'll draft something and give it to you
18 tomorrow.

19 And then the other acts instructions at 17 and 18.

20 MR. GUNN: Your Honor was letting the 404(b) evidence
21 in for -- at one point you were talking, when we ruled on a
22 pretrial, you were talking about identity, I believe.

23 THE COURT: Well, that but also by the time I heard
24 all the other evidence and attempts to impeach the children
25 about what actually happened and cross-examination of the doctor

1 about whether there were certain signs that the victims had, I
2 think it's substantive evidence. So I don't know -- my first
3 question is do I need to give 18 if I'm giving Page 17, and if I
4 need to give both of them, what language do you want me to put
5 in 18?

6 MR. GUNN: I think the court should give both. As far
7 as the language in 18, I mean the evidence is still 404(b), at
8 least some of it, because it's about other girls than the
9 alleged victims.

10 THE COURT: Well, and so the last sentence on 17 says
11 "You should consider the evidence about other acts of the
12 defendant only as they relate to the charges against this
13 defendant," which is, I think, where we are.

14 MR. GUNN: Right.

15 THE COURT: I wasn't limiting it after I heard the
16 testimony.

17 MR. GUNN: Right. But it still is -- the evidence
18 that he, for example, tied up some other girl, which is one of
19 the sets of photos, that's admitted under 404(b) to show, for
20 example, identity, was one that the Court most clearly --

21 THE COURT: Well, I don't really know how to phrase
22 it, but it's not just to show identity, it's to show that these
23 little girls are telling the truth. You have tried to impeach
24 them and suggest that none of this ever happened, and those
25 photographs are substantive evidence that those little girls are

1 telling the truth.

2 MR. GUNN: The photograph of another girl having it
3 happen to her?

4 THE COURT: Yes. In that home, in that bedroom, yes.

5 MR. GUNN: I guess -- I think that's -- well, I guess
6 the Court has to figure out how to put that in the instruction.
7 I don't think --

8 THE COURT: That's why I am suggesting that you can
9 come up with some language or otherwise, it's just considering
10 that evidence as it relates to the charges against this
11 defendant, which is really what I'm saying. Relates to the
12 charges.

13 MR. GUNN: Right. I guess my concern is I think what
14 the Court is saying -- it really then is saying because he did
15 it to one other girl, that makes it more likely he did it to
16 this girl and this girl is telling the truth.

17 THE COURT: No. I'm saying that because you tried to
18 impeach these little girls by saying no such thing ever
19 happened, that the Government was entitled to and did present
20 substantive evidence that those things happened in that house,
21 which has some tendency to prove that they're telling the truth.

22 MR. GUNN: Oh, you see, I don't -- I guess -- I guess
23 I'm noting an objection or an argument. I don't think that the
24 fact that it happened in the same house to another girl -- I
25 mean that -- I mean I think -- I mean, I think that still has to

1 fit into some theory of relevance, like identity --

2 THE COURT: If you want me to focus on the fact that
3 they -- I mean, I'm not sure that helps you, but if you want to
4 come up with some language by tomorrow, then -- then --

5 MR. GUNN: My proposal --

6 THE COURT: -- be my guest.

7 MR. GUNN: I mean, I obviously have objected to it and
8 said it shouldn't come in for any reason.

9 THE COURT: I know.

10 MR. GUNN: So I'm -- in a way, I am not the person to
11 say what the reason is. On the other hand, what the Court was
12 articulating earlier that I disagree with was that it tends to
13 show the defendant's identity. That was --

14 THE COURT: No. No. I said that depending on what I
15 heard -- at the very least it was identity, but depending on
16 what I see at trial --

17 MR. GUNN: I agree.

18 THE COURT: -- you did exactly what I thought you were
19 going to do that caused me to say that. If you can think of
20 something that is narrowly tailored, I will certainly consider
21 it. But I'm not sure narrowly tailoring it is helpful to your
22 client. It may be more harmful for me to point out that that is
23 why they can consider it to figure out whether it is him. It
24 may not be --

25 MR. GUNN: My position is what you ought to put in

1 there is the word "identity."

2 THE COURT: Well, to say "defendant's identity"
3 doesn't make any sense.

4 MR. GUNN: I guess that's -- that's what I would
5 suggest. I think the Court has to give some limiting
6 instruction. That's what I think --

7 THE COURT: If you come up with something, I will
8 consider it. Otherwise, as far as I can see, the one on Page 17
9 is entirely appropriate and addresses my concerns, addresses my
10 reasons for introducing this evidence as it relates
11 substantively to the charges against this defendant.

12 As I said, if you want to come up with something else,
13 I will certainly consider it. Don't ask me to come up with
14 something else, because in my view the something else I would
15 come up with would be more harmful to your client by focusing
16 the jury on specific issues. But I'm not a Defense attorney,
17 never have been.

18 So what I'm saying to you, in your client's best
19 interests if you think there's something that's -- knowing that
20 I have let the evidence in and understanding my reasoning, if
21 you think there's something that you want to propose to tailor
22 it that's better, I am certainly willing to seriously consider
23 it.

24 MR. GUNN: At this point what I am proposing is you
25 insert the word "identity."

1 THE COURT: Okay. And my point is not -- not the
2 concept of identity. My point is "You may consider that
3 evidence only as it bears on defendant's identity and for no
4 other purpose" is not a sentence that makes sense. He's not a
5 masked man, we are not trying to figure out whether it's
6 Superman or Clark Kent. What is identity in that sentence
7 wouldn't make any sense.

8 MR. GUNN: Identity as to --

9 THE COURT: Whether the defendant is the person that
10 committed that -- you know --

11 MR. GUNN: Only as it bears on whether the
12 defendant -- well --

13 THE COURT: That's what I am saying. It starts to
14 sound worse for your client.

15 MR. GUNN: I think Your Honor, in the 404(b)
16 instruction in brackets, that's precisely one of the words the
17 Ninth Circuit has.

18 THE COURT: I understand that. But the Ninth Circuit
19 does not have it, sir. A group of judges and lawyers that are
20 not Ninth Circuit judges have it.

21 MR. GUNN: I'm sorry?

22 THE COURT: The Ninth Circuit did not prepare those
23 instructions. The Ninth Circuit has not --

24 MR. GUNN: You mean the Ninth Circuit judges?

25 THE COURT: Right. So somebody took a line out of a

1 statute and stuck it in there. They didn't think that district
2 judges would just by rote and without thinking about their case
3 stick it in there. That sentence makes no sense to me, as I
4 said.

5 If -- I'm certainly willing to -- and I think -- you
6 know, I am asking you to think on your feet and it's not fair.
7 Think about it tonight. I am willing to consider a limited
8 concept, even though I introduced it for -- allowed it to be
9 introduced for a somewhat broader concept. If you can come up
10 with something that sounds more appropriate or safer, I mean --
11 and I say safer advisedly -- I don't think I -- I don't think
12 the jury is going to have any trouble with this case and I don't
13 want the Ninth Circuit to have any trouble with the way we
14 handled it.

15 MR. GUNN: All right. If I think of something -- some
16 difference suggestion, but right now that is my suggestion based
17 on the Ninth Circuit bracketed language and I understand that
18 that is what the Court is saying, it's not the Court, it's an
19 advisory committee obviously, but that's true of all the Ninth
20 Circuit instructions.

21 THE COURT: Not necessarily. Many of them have been
22 approved by the Ninth Circuit --

23 MR. GUNN: It's true of many of the -- I should say
24 many of the Ninth Circuit.

25 THE COURT: Yes.

1 And I changed 19 because the Indictment doesn't say
2 "on or about." It says "between on or about." So I changed
3 that language to make more sense.

4 I'm not sure if this is correct legally but on the
5 bottom of Page 22, do you know if they have to be unanimous as
6 to which conduct?

7 MS. DONAHUE: I saw that. There is nothing that says
8 they do and there is nothing that says they don't. I -- I -- I
9 have looked. I -- the reason that the Government proposed this
10 special verdict form was going to the issue of commercial.

11 THE COURT: And the special verdict form would suggest
12 that they would have to be unanimous as to each one that they
13 checked, so it seems to me that this is appropriate language.

14 MS. DONAHUE: Yeah. And it -- it's probably the
15 safest thing to do rather than to -- without that language and
16 without a special verdict, it's more vulnerable. That's why we
17 proposed it the way we did.

18 THE COURT: Okay. And instruction No. 23, I assume
19 the Defense is going to argue that Exhibit 126 suggests that I
20 should give that last paragraph?

21 MR. GUNN: Yes. Exhibit 126 is not one of the charged
22 victims. So I don't know --

23 THE COURT: Okay.

24 MR. GUNN: Pardon me?

25 THE COURT: It doesn't seem to have any relevance

1 then.

2 MR. GUNN: Well, it is because there are references to
3 Nap in other places and potential sexual activity with Nap. And
4 Nap is probably one of the people in the Nap and Kia set of
5 photos, so I think -- I think it -- the jury may -- for example,
6 there is a letter where Mr. Pepe says, "My usual partners were
7 Nap and Ni," so I think it makes a difference for the jury to
8 know that Nap is an adult, and the Exhibit 125 suggests Nap and
9 Ngoc are the same people. So I think it's relevant for that
10 reason.

11 But I think that in this letter that I'm talking about
12 also, Mr. Pepe talks in the letter about how he couldn't tell
13 how old Sokunthea was. So I think that certainly justifies it.

14 THE COURT: Again, in the interests of safety --

15 MS. DONAHUE: Yes. It's an incredibly weak argument.

16 THE COURT: Incredibly weak on the Defense side works.

17 MS. DONAHUE: That's why it's in there in brackets
18 because I couldn't resist it.

19 THE COURT: I'm taking the brackets out.

20 MS. DONAHUE: I know, but I couldn't resist putting it
21 in brackets.

22 THE COURT: Okay.

23 What did you decide about venue?

24 MS. DONAHUE: 3238 is fine and I will modify it.

25 THE COURT: I have got it all on my system. We are

1 just going to say the last known address.

2 MS. DONAHUE: And I'll stipulate to that and that's
3 that. We're done.

4 THE COURT: Okay. And on Page 28, I just changed that
5 so that it refers to verdicts, more than one, instead of
6 verdict. Those are the changes I made so far. So I will add
7 the judicial notice, I'll work on this other instruction and try
8 to give you a more closer to complete set tomorrow so that we're
9 ready whenever we have to give them.

10 Did I get another verdict form from you?

11 MS. DONAHUE: Yes. I emailed you one that actually
12 has a signature on the bottom, signature line and date.

13 THE COURT: All right.

14 Anything else we should discuss before tomorrow?

15 MS. DONAHUE: No, Your Honor, thank you.

16 (Proceedings adjourned at 2:33 p.m.)

17 CERTIFICATE

18
19 I hereby certify that pursuant to Section 753, Title 18,
20 United States Code, the foregoing is a true and correct
21 transcript of the stenographically reported proceedings held in
22 the above-entitled matter and that the transcript page format is
23 in conformance with the regulations of the Judicial Conference
24 of the United States.

24 _____
25 Pamela A. Seijas, CSR No. 3593
Official Reporter

Date

Certificate of Service

I hereby certify that on May 28, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

By: /s/ James H. Locklin
JAMES H. LOCKLIN
Deputy Federal Public Defender

No. 14-50095

**In the United States Court of Appeals
for the Ninth Circuit**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MICHAEL JOSEPH PEPE,

Defendant-Appellant.

On Appeal from the United States District Court
for the Central District of California

The Honorable Dale S. Fischer, Presiding

No. CR-07-00168-DSF

Appellant's Excerpts of Record
[Volume 9 of 12]

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[†] Although this document and the two orders that follow were not filed until after the judgment and notice of appeal were filed, they are placed here in the excerpts because they relate to the trial proceedings.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE DALE S. FISCHER, JUDGE PRESIDING

United States of America,)
Plaintiff,)
vs.) Case No.
) CR 07-168 (A) -DSF
Michael Joseph Pepe,)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS

Day 10

Los Angeles, California

Friday, May 23, 2008

Pamela A. Seijas, CSR, FCRR
Official Reporter
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21 ALSO PRESENT: ATTACHE GARY PHILLIPS
22 ICE SPECIAL AGENT EDDY WANG
23

24 THE INTERPRETER: CHANDRA HAC
25

Los Angeles, California, Friday, May 23, 2008

7:50 a.m.

-oOo-

(Jury Out)

THE COURT: Good morning. I have provided you with a set of revised jury instructions and some notes on the changes and additions that I made.

I didn't actually get a verdict form emailed to me, but I just added a signature block.

MS. DONAHUE: You didn't?

THE COURT: No.

THE CLERK: We have received one and I remember --

THE COURT: I know. But that one doesn't have the signature page. I have now just done it myself.

MS. DONAHUE: Thank you, Your Honor. It's in my outbox -- okay. Thank you. I did it myself so I must have --

THE COURT: That's what happens when you do it yourself.

MS. DONAHUE: There is a lot of truth in that. Someone has received a verdict form from me.

THE COURT: I have the Government's request for judicial notice and as I understand it, the Defense doesn't object to it but I'm not sure what I am supposed to do with it. It's not in a form that I can just read it to the jury and it's not in a form that it can be given to the jury.

1 MR. LULEJIAN: We will convert it then, Your Honor, by
2 Tuesday.

3 THE COURT: Okay. What do we need to discuss before
4 the jurors come in?

5 MR. GUNN: The Court will discuss the instructions at
6 the end of the day. I saw the Court's note here. I am just
7 quickly skimming through.

8 THE COURT: Yes, I think we can do that.

9 MR. GUNN: Then I will set those aside.

10 THE COURT: Did Mr. Brown complete his work on the
11 video excerpts?

12 MR. BROWN: Yes, Your Honor. We have transcripts of
13 the excerpts. I have portions of the excerpts on my laptop
14 computer and I also have them on CD. With the Court's
15 permission I would like to just play the excerpt from the
16 laptop, probably easier than moving the CD's in and out.

17 THE COURT: That's fine with me, so long as the
18 Government has seen them.

19 Is there some limiting instruction that you wanted to
20 give?

21 MR. BROWN: Your Honor, the Government and I discussed
22 removing one of the portions of the transcripts which we have
23 agreed on. We have not discussed limiting instructions but it's
24 probably not a bad idea, Your Honor. Perhaps we could come up
25 with something after Dr. Maloney -- we anticipated playing the

1 portions after Dr. Maloney testifies and Dr. Maloney's here in
2 court now.

3 THE COURT: Okay. Is he going to be your first
4 witness then?

5 MR. BROWN: Yes, Your Honor.

6 THE COURT: And the Government knows who else you are
7 going to be calling today?

8 MR. BROWN: I believe so, Your Honor.

9 THE COURT: Anything else we need to discuss or should
10 we just veg out until the jury comes? Okay. I will see you in
11 about ten minutes.

12 MR. BROWN: Thank you very much, Your Honor.

13 (Recess taken)

14 (Jury In)

15 THE COURT: Good morning. Everyone is present. Does
16 the Defense have another witness?

17 MR. BROWN: Yes, Your Honor. The Defense calls
18 Dr. Michael Maloney to the stand.

19 Michael Paul Maloney, Defendant's witness, was sworn

20 THE CLERK: Please have a seat. Please state and
21 spell your full name for the record.

22 THE WITNESS: My name is Michael Paul Maloney.
23 M-I-C-H-A-E-L. Middle name P-A-U-L. Last name M-A-L-O-N-E-Y.

24 THE COURT: You may proceed.

25 MR. BROWN: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. BROWN:

Q. Good morning, Dr. Maloney.

A. Good morning.

Q. What is your profession?

A. I am a licensed clinical psychologist. I am a board certified forensic psychologist, but my main occupation is chief of psychological services for the L.A. County jail, general mental health services.

Q. How long have you been in that position?

A. That position just was promoted about two months ago. I have been the program head of women's health at Lynwood jail for about eight years.

Q. Prior to that what did you do?

A. Prior to that I was pretty much functioning as an independent forensic psychologist for state and federal courts and I was program head for a unit of Child Health USA where I ran the family evaluation program for the children's court. Prior to that I was an associate professor and psychologist at L.A. County Medical Center.

Q. Do you do any teaching work now?

A. I am clinical professor at UCLA. I teach a course called forensic issues.

Q. Any other academic appointments?

A. I am still a clinical professor at UCLA Medical Center.

1 Q. In terms of your education, could you just describe that a
2 little bit for the jury?

3 A. I have a Ph.D. in clinical psychology from University of
4 Colorado. Prior to that I had a Master of Science in vocational
5 rehabilitation, second Master's degree in clinical social
6 psychology from the University of Colorado.

7 Q. Any other professional licenses, certifications?

8 A. I'm licensed as a psychologist and as a marriage/family
9 therapist, State of California.

10 Q. Have you had any fellowships that we should be aware of?

11 A. I did a post-Doctoral fellowship at LA County USC,
12 basically general hospital, in the emergency psychiatric
13 hospital. And previously I had a fellowship from the
14 United States Public Health Service.

15 Q. Published articles, books?

16 A. I have published three books and -- well, one sole author.
17 Two as a senior author with a co-author and a fourth one, I'm
18 one of three authors.

19 Q. And touching on your experience a little bit, you said you
20 worked at the children's court or with the children's court for
21 some time?

22 A. In approximately 1975, panels were formed of psychologists
23 for the children's court, juvenile delinquency, adult criminal,
24 and I was appointed on all those panels in about 1975. So I am
25 still on the children's court panel. I do many less cases than

1 I used to but I'm still on that panel.

2 Q. And what kind of experience do you have with respect to
3 interviewing young children?

4 A. Well, I started probably in about 19 -- before they had
5 those panels, I was doing some of that work probably 1972 or '3.
6 And over the years, done in the hundreds of evaluations for the
7 children's court, appointed by the Court. And I have presented,
8 for the American Academy of Forensic Psychology, numerous
9 presentations on child sex abuse and allegations of sex abuse.

10 I was also on the sexually violent predator panel for
11 the State Department of Mental Hygiene for about four years and
12 was on the Mentally Disordered Sex Offender Panel, still do some
13 of the followups for that.

14 Q. In the course of your experience or work, have you had to
15 testify in court before?

16 A. Yes.

17 Q. As an expert?

18 A. Yes.

19 Q. How many times have you testified as an expert, would you
20 say, Dr. Maloney?

21 A. I couldn't really estimate it. It would be in the
22 hundreds.

23 MR. BROWN: Your Honor, may Dr. Maloney be declared an
24 expert in child psychology?

25 THE COURT: I --

1 MS. DONAHUE: Objection, Your Honor, in child
2 psychology specifically.

3 THE COURT: Would you like to voir dire or would you
4 like to reformat your request?

5 MR. BROWN: May he be declared an expert in
6 psychology?

7 THE COURT: Any objection?

8 MS. DONAHUE: No.

9 THE COURT: I will declare him an expert in
10 psychology.

11 MR. BROWN: Thank you, Your Honor.

12 Q. Dr. Maloney, talking about your experience and expertise in
13 interviewing techniques, you said you have interviewed hundreds
14 of children?

15 A. Yes.

16 Q. And those interviews -- what were the purpose of those
17 interviews generally? Do they range in -- in goals?

18 A. It's quite broad. The majority were in the context of the
19 children's court where an issue has been raised regarding the
20 well-being and welfare of children early on in the early '70s.
21 Most of that dealt with parental problems, physical abuse, so
22 forth.

23 As time went on, there were increasing numbers of
24 allegations of child sex abuse. And so they're presented pretty
25 broad, but my task is simply to provide information to the Court

1 regarding the makeup of parents, the children, whatever.

2 Q. And in the course of your education, training and
3 experience, have you learned specific models or techniques for
4 interviewing children who have been suspected victims of abuse?

5 A. I would broaden that a little and -- in a book with Oxford
6 University Press, they have a chapter regarding interviewing
7 pretty much across the board and present a model there. And the
8 issue of interviewing children is a very complicated one because
9 you have to take into account their age, level of brightness,
10 how they relate to me, and so forth and their previous
11 experiences.

12 So there is no single model right now. Probably the
13 most cited book is by Katherine Kuehnle, and it's interviewing
14 for allegations of child sex abuse, and in there, in all of the
15 books written about this and studies, it's variable. You have
16 to take the particular child into account. And there are
17 certain guidelines. Interviewing children, what we're trying to
18 do is get as much as we can of a spontaneous report from a
19 child. So we want to avoid suggestion, leading questions,
20 contamination, so forth.

21 How that's actually done really varies from child to
22 child, situation to situation.

23 Q. Why is a spontaneous report the goal when interviewing
24 children?

25 A. When I use the word spontaneous, what I'm really trying to

1 imply is if you get a report from a child and it's in their own
2 words and it's consistent with their developmental level or
3 cognitive level and looking through the whole case you cannot
4 determine that anyone has talked to them about that, that is
5 kind of a standard of what may well be a good report of their
6 own experience. So spontaneous is used in that sense.

7 And, for example, if a child has been talked to in one
8 case that I was working on, 69 times before I saw them, the odds
9 of me getting a spontaneous report are very low.

10 Q. So if a child has been interviewed numerous times before
11 meeting with you, it could potentially affect the quality of the
12 information that is being provided? Is that fair to say?

13 A. Pretty much. And it deals a lot with how those interviews
14 took place. I mean, for example, in the children's court, when
15 I'm seeing a child it's pretty clear they've already been -- if
16 it's an issue of child sex abuse, they have probably been
17 interviewed by police officers, certainly by the Department of
18 Children and Family Services. They may be in therapy. There
19 may be all kinds of exposure before I ever see them. And in --
20 the more exposure, the less that I'm really going to be able to
21 generate anew.

22 Q. Can you talk about the concept of a disclosure interview
23 and the significance of that?

24 A. Well, I would -- I would say, No. 1, a person like myself,
25 seeing children after an issue has already been brought up, it

1 it's very rare to have a disclosure interview. What that term
2 really means is that it's the first time a child makes a report
3 in this -- what we're talking about today, in terms of child sex
4 abuse. So school teachers get a disclosure interview, a
5 therapist might get a disclosure interview and that starts the
6 ball rolling. And, you know, so in terms of where I would come
7 in on most cases, I wouldn't get a disclosure interview.

8 Q. Ideally speaking, is it better to have less interviews than
9 more with respect interviewing children who have been suspected
10 of abuse?

11 A. In all of what we're going to talk about, the answer is a
12 little more complicated.

13 In general, if you see children dozens and dozens of
14 times and the interviewers are really interested in getting a
15 report, it certainly is to the disadvantage of that child being
16 spontaneous later on. So I would agree with that.

17 In other cases, children may not develop rapport with
18 anybody for a while. When they see me, I have to be aware of
19 the fact that a child is looking at an old guy with a patch and
20 a beard and I have to overcome that before I can even really
21 talk to children.

22 So sometimes it takes a little while but when you get
23 into cases where they have been seen dozens and dozens of times,
24 it really erodes what you're going to get out of a follow-up
25 interview.

1 Q. You mentioned the word suggestibility. What is -- what is
2 suggestibility?

3 A. If I can back up a bit. Depending on age, children can be
4 very suggestible, meaning that they're easily influenced by some
5 outside issue.

6 And I'll give you kind of a cut and dried example.
7 They have done research where several children will be sitting
8 in a room and a man will walk through the room wearing a blue
9 shirt and adjust a clock. And then after a while, the
10 interviewers say to the children one at a time did you see that
11 guy walk through here with the red shirt adjust the clock, and
12 they'll agree to that. And then thereafter, if you ask him he
13 is wearing a red shirt -- and that's very limited -- but to the
14 extent that an interviewer implies or tells a child certain
15 things, they can be influenced by that. That whole umbrella of
16 issues is put under suggestibility.

17 Q. Is that the same as coercion and contamination?

18 A. They all interact really. Contamination, when I talk about
19 a spontaneous report, if someone goes into a child and says do
20 you remember this guy, and they describe him, and what he did to
21 you, that -- the child is already contaminated because you have
22 presented them with something. Little kids are very vulnerable
23 to that. The older ones can be less vulnerable to that.

24 But contamination is bringing in material to the child
25 and -- that they didn't have before.

1 Q. And why --

2 A. And your other word, coercion, often occurs in what's
3 called a dichotomist question, did he do this or this, you know,
4 where you really -- there is pressure on the child to pick one
5 of those two things.

6 And I might also mention on coercion, the very role of
7 an adult examiner with a young child has a coercive effect in
8 and of itself. I mean, they're aware that you have status as an
9 adult. If you're a doctor or police officer, you have more
10 status, and that will influence them.

11 Q. Is that because children have a need to please authority
12 figures or is it something related to that?

13 A. Say it again?

14 Q. Is that because children have a need to please authority
15 figures? Is that the concept?

16 A. It could be. I mean, developmentally, children figure out
17 over time adults have a different status than they do. They
18 become dependent on adults. They look to adults to make
19 decisions for them. And that's a natural part of development.

20 Q. Are there other developmental factors that play into the
21 risk of suggestibility, coercion and contamination?

22 A. There has been a lot of studies. Generally children that
23 are less sophisticated, children that may be less bright, tend
24 to be somewhat more vulnerable to suggestion.

25 Q. Are there ways to minimize the risk of suggestibility when

1 interviewing -- conducting interviews of children?

2 A. There are. The number one way is not to use questions or
3 imply answers to questions with the child. That can be very
4 frustrating at times because you're trying to get a child to
5 talk about their own experience.

6 And in typical interviewing, the interviewee, the
7 person you're talking to, should be saying more words than you
8 are. And that does take some effort, and you have to build
9 rapport and you have to facilitate them to talk.

10 Q. Is it fair to say that it's sometimes difficult to
11 interview children in different situations? Sometimes children
12 are reluctant to talk?

13 A. Oh, absolutely.

14 Q. Does that mean it's better to ask leading, closed-end
15 questions to get a child to talk or to supply words?

16 A. Well, you can't force a child to talk. But on the other
17 hand, there is a lot of things you could do to encourage them to
18 talk. And, again, when I see a little child, let's say, four or
19 five years old, they're -- and I interview them without other
20 people present, they're afraid of me. So my task right off the
21 bat is let's get rid of that, you know, and so sometimes using
22 puppets, even playing tic-tac-toe, just cutting out that who's
23 this guy and relating to them before you really try to get
24 information.

25 Q. When you say relating to children, do you talk to them like

1 a kid? Do you talk to them in a baby -- using child language?

2 A. I don't. And some people do that. Some people, you know,
3 play games of a very childlike nature. Sometimes that's good to
4 get rapport but it also presents an image of this is game time
5 so there has been cases I have worked on where they have said
6 things like well, we'll use these dolls. You don't really have
7 to say anything, the dolls will speak for you, that kind of
8 thing. When you do that, you decrease the child's own
9 responsibility and it becomes a game and what they say is very
10 difficult to assess what it really means.

11 Q. Could you expand on that a little bit? What do you mean if
12 a child -- are you saying that if a child is playing games
13 during an interview, it --

14 A. What I'm saying is if the whole idea of your interview is
15 we're playing games, it pulls away from the responsibility and
16 the seriousness of what we're talking about.

17 Q. You mentioned that you interview children alone in a room.
18 Is the setting important in terms of where interviews are
19 conducted? Is that a risk factor with respect to --

20 A. Where it's conducted?

21 Q. Yes. In terms of the room itself, whether it's a quiet
22 setting versus a crowded room with lots of people and lots of
23 distractions?

24 A. Well, again, our goal is to get a child to talk in their
25 own words and feel comfortable doing that. Whatever the

1 environment is that decreases that is probably not a good
2 environment.

3 I interviewed a young boy who made certain statements
4 to two uniformed police officers that came into his house, you
5 know, replete with firearms. And he simply responded to
6 whatever question they asked in the sense that they asked it. I
7 can't say that that report was inaccurate or not but it
8 certainly -- a young boy is going to speak to a uniformed police
9 officer different than somebody else.

10 And if you have a situation where there are multiple
11 people present, it does have an impact on what the child is
12 going to say. They're overwhelmed. That social situation puts
13 a lot of pressure on them.

14 Q. There is a concept reference called accusatory. In terms
15 of other risk factors, increasing the risk of contamination and
16 suggestibility, does an atmosphere of accusation increase the
17 risk of contamination?

18 A. When you say that an atmosphere of accusation toward the
19 alleged perpetrator? I presume you're not talking about the
20 child.

21 Q. Yes. Yes.

22 A. Children will pick up, as anyone else will, on the tenor of
23 what's going on. And if it's accusatory, if it's contending
24 that they're negative, bad, whatever, they will reflect that.
25 They can reflect that. I shouldn't say they will.

1 Q. Can you give an example of that, just generally speaking?

2 A. Well, you take a young child and you say, you know, not in
3 these words but this is a bad guy, we already know it, you're
4 setting the stage for the child to go along with that concept.

5 Q. What about -- what about the -- I guess it's kind of the
6 inverse of that. What about supportive statements to a child?

7 A. Say it again?

8 Q. What about the converse of an accusatory tone? What about
9 a supportive statement to a suspected --

10 A. About the perpetrator?

11 Q. About -- about what may or may not have happened to the
12 alleged victim.

13 A. It would go either way. It could influence them either
14 way.

15 Q. So if an investigator says something to a young child, "I
16 know what happened to you was really bad, it was a horrible
17 thing that happened to you," could that contaminate the
18 interview process?

19 A. It certainly could. I mean, that's what I was talking
20 about before. If you identify the alleged perpetrator as bad,
21 you already tell them you know what's happening and so forth.

22 Q. What about if an interviewer asked a child, "What should
23 happen -- what do you think should happen to the person who did
24 this to you" in an interview?

25 A. That's a tough question. It depends largely on the issue

1 of age and brightness and so forth. Studies done on the
2 development of morality would indicate that children until
3 they're seven, eight, nine years old don't really have a level
4 of morale development to even understand what that question
5 would be. At an abstract level. At a very concrete level, he
6 is a bad guy, get rid of him. But it puts a great deal of
7 responsibility on a child when you ask him that kind of a
8 question.

9 Q. Do you ask those kinds of questions in your interviews,
10 Doctor?

11 A. I have never.

12 Q. Why not?

13 A. I don't know -- my task is to be able to provide
14 information to the Court or the Department of Children and
15 Family Services, whatever, and I don't think that provides any
16 additional information. And it does put a child in a bind.

17 Q. What about the role of peers on -- with respect to the
18 issue of suggestibility? Is peer pressure a factor in terms of
19 that?

20 A. Definitely a factor. There was a case in the State of
21 Minnesota in the mid 1980's -- and there were a lot of these
22 cases going on at that time, these broad child abuse cases and
23 infanticide, satanical rituals and so forth, so this case
24 started with one child and developed and developed until they
25 ended up with, I think it was, 21 alleged perpetrators. Hubert

1 Humphrey the III, who was the Attorney General of Minnesota at
2 the time, brought in people from the federal government,
3 psychologists, all kinds of people, to look at this case, and it
4 fell apart. There was no basis for it.

5 One of the things they talked about was
6 cross-germination.

7 Q. What is that?

8 A. And cross-germination is when you either tell a child,
9 "We've already heard this before from other kids" or "other kids
10 said this" or they talked to other kids. You know, so that's
11 again a source of suggestibility. It happened to everybody, it
12 must have happened to me, too. Or I'll go along with that.
13 Whatever the mechanics of the mind are, they end up being
14 affected by it.

15 Q. What about cultural factors or linguistic factors? For
16 example, if a person is being interviewed, a person speaks
17 Vietnamese but they're being interviewed in English but there is
18 multiple interpreters in between kind of filtering the questions
19 and filtering the responses, is that something that could
20 increase the risk of contamination and suggestibility?

21 A. Let me start at the beginning. You said what about
22 cultural factors.

23 In this case, they're just a huge number of
24 cultural/language factors. And I would never attempt to
25 evaluate children from Cambodia because I don't know enough

1 about that culture, I don't know the language. The very words
2 that they say are critical, so if you interview in English, it's
3 translated into Vietnamese and Cambodian, all those answers end
4 up to be different. And there's, you know -- so it really
5 complicates the issue.

6 And in some of these cases, like as far as I could
7 determine, there was one child and eight people in the room.
8 And when you look at the video, you only see the one child but
9 there is obviously a whole cadre of people around the walls or
10 something. I'm not sure where they were. That really puts a
11 child in an anxious situation.

12 So the culture, the language, all those people. I
13 don't know if it would be suggestibility per se but certainly
14 can have an influence on them.

15 Q. Why did you say that the words that a child uses is
16 crucial?

17 A. When we're interviewing children in English, if we start
18 there, each child has their own words for, let's say, body
19 parts. They have their own words for sexual activity, if they
20 know about it. And these are often very personal words or
21 family words. So if you ask them using a different term, they
22 might not know what that is at all.

23 So in this case, there are -- there is a Vietnamese
24 interpreter using certain terms, Cambodian interpreter using
25 certain terms. They have this conversation, and then it goes

1 back to the English interviewer. And there is a whole number of
2 steps there that seem to change the words.

3 And with a child, you really have to know their words,
4 what they're talking about and how they use it.

5 Q. Not to disparage you, Doctor, but isn't what you're saying
6 here really just -- just common sense?

7 A. I think all of what we've talked about right now is common
8 sense. If you interview a lot of children, you know this
9 happens, and I think if you're a parent, you know it happens,
10 and it is common sense to a great degree what we're talking
11 about.

12 Q. Are you saying that you can tell if a child has been abused
13 or not based on your studies, based on a review of an interview?

14 A. Of this case?

15 Q. Yes.

16 A. I couldn't tell you if they were or were not. I don't know
17 the other data in this case. I'm just looking at these
18 interviews.

19 Q. So how do you see your role in terms of the -- the -- the
20 undertaking that we asked you to do?

21 A. Well, I think the initial question, "Would you look at some
22 of these interviews, look at some of these tapes and tell us,
23 you know, what your thoughts are about it."

24 And I read a number of these interviews. It's a very
25 involved, timely task, looked at the tapes, and in some cases, I

1 actually counted, with my associate, Dr. Howe, every single
2 utterance of everybody in the room. And in one it was like
3 12,600 words from interpreters and interviews and 1,088 from the
4 child.

5 So I started looking at it across the board, and
6 really looking at the process of it, what's happening in these
7 interviews. And then you could look at the content, which is
8 what they're really saying. But it was very hard to take that
9 content and see if the child was saying something new. And then
10 also in the course of doing this, it became pretty clear that
11 they had been interviewed before, obviously before, and they had
12 probably been in counseling or therapy before. So you really
13 don't know even where these cases come in on a timeline.

14 So my task was to look at it and I think I mentioned
15 to you this is some of the challenges that we have here.

16 Q. If we could just back up and talk about your methodology
17 again. You said in terms of reviewing the interviews in this
18 case, you engaged in a multiple step process. You looked at the
19 interview process -- you talked about the interview structure,
20 you talked about the interview process, you talked about
21 content.

22 Could you just kind of explain those terms generally
23 and then we can talk about the specifics?

24 A. The interview structure is really what went on here, who is
25 doing the interview, who is talking to these children, you know.

1 So you can -- you can identify that and I can count the words of
2 these people. So that's just how it happened, where it
3 happened, who's present, so forth. Those are things that we
4 could all absolutely agree upon.

5 And then the process is really the interaction of
6 these people with this child. We might not agree a hundred
7 percent, but we would agree that there is one interpreter or
8 translator asking a question using certain words and then
9 another one asking the question maybe using different words.
10 And in the course of that, I have no idea if those English words
11 can even translate correctly into Cambodian and Vietnamese. I
12 mean, you know, we have a concept but there is all kinds of
13 different words that can be used for that concept. So that's
14 really the process of what's going on.

15 And then the content is what are these children saying
16 or what is the interviewer saying. So the structure, I think,
17 is pretty clear. The process is that whole interaction, the
18 social issues of a lot of people being in that room with the
19 child, all of those things are a little harder to quantify. And
20 then the content you can look through. And with some of these
21 girls they say he tied me up, hands behind my back, raped me,
22 engaged in oral sex, that's the content.

23 But what we've been talking about before that is where
24 did that come from. It could be an actually true statement. It
25 could also be, however, influenced by a whole bunch of other

1 variables.

2 Q. In this case, what did you do? How did you begin your
3 review?

4 A. Well, what I began with is reading these transcripts. And
5 it's -- it was a very challenging job because there is so much
6 going on. And then you had sent me some DVD's, played them and
7 the early ones I couldn't get to play. One of them I did.

8 And then I had a chance to look at the interview
9 process, but it's really just focused on the child and maybe one
10 other person, maybe the interviewer next, the English
11 interviewer, maybe someone else. But all the rest isn't there.
12 So I didn't find those DVD's of very much help to me.

13 Q. Based on your review in terms of the structure of the
14 interviews generally in this case, what were your findings with
15 respect to the interview structure?

16 A. I think that's what we've been talking about.

17 Q. Yes.

18 A. Multiple translators, the language issues, etc., who's in
19 the room, all of those things.

20 Q. And you talked about the word count, is that a
21 structural --

22 A. That's part of the structure, yes.

23 Q. And generally what did you -- you mentioned the word count,
24 the number of words used by the interviewee versus the number of
25 words used by the people who are asking questions.

1 A. The goal of interviewing anybody is to get that interviewee
2 to talk, to put out words, their own words. And to the extent
3 that you have many, many, many more words put out by the
4 interviewer and the translators, it raises the issue of what are
5 all these words and do they have in them issues of
6 suggestibility, contamination, etc.

7 Q. And you said that you saw a disproportionate ratio of
8 questions to answers? Or words to responses?

9 A. Actually words. Single words. And, you know, it doesn't
10 come up and give you a finite answer, but it does represent
11 what's going on.

12 And to be balanced, there was one interview that we
13 looked at that there was one interviewer and one child. That
14 interview was more balanced, you know. But the other ones,
15 there's a huge amount of talking by other people.

16 Q. And what were your findings with respect to, I guess, the
17 process issues in this case?

18 A. Well, that's the part I say we can't absolutely quantify,
19 but we do know there is a number of people in those rooms, we do
20 know that could have an impact on a child, we do know that some
21 of the interviewing was very direct. For example, referring to
22 some bodily secretion, was it sweet, sour or salty. When you
23 ask a question like that, it's easy to pick one of them, and
24 that's part of that process, how those words are being used.

25 Q. Anything else, Doctor? I'm sorry.

1 A. No, not really.

2 Q. And then under the content heading, what were your findings
3 with respect to the content of these interviews?

4 A. The -- some of the children talk about very explicit sexual
5 activity. And that's the content. That is definitely there.
6 But how do you determine whether that's their own spontaneous
7 recall, I couldn't tell, because there was too much of this
8 other stuff going on. They had been talked to many times
9 before, from what I could tell.

10 Q. Based on all of your experience and your review in this
11 case, what's your conclusion with respect to the reliability of
12 the interview process in this case or the quality of the
13 interview process?

14 A. Well, I think what I've talked about previously brings me
15 to the conclusion that there is a lot of questions about how
16 this occurred, and what really went on there, and as I said
17 before, if I only had this set of data, I couldn't tell you if
18 these children were molested or not molested, but that's only
19 dependent upon these interviews.

20 MR. BROWN: Thank you very much, Doctor.

21 THE COURT: Cross-examination?

22 CROSS-EXAMINATION

23 BY MS. DONAHUE:

24 Q. Good morning, Dr. Maloney.

25 A. Good morning.

1 Q. Dr. Maloney, you are not saying that if an interview
2 question is leading, that means the information provided by the
3 child necessarily is untrue; right?

4 A. That's correct.

5 Q. In fact, one of the best ways to ensure that information
6 provided by a child is not false is to look and see if there is
7 information that corroborates what the child has said; right?

8 A. Correct.

9 Q. Corroborating meaning is there physical evidence
10 independent of what the child has said that supports what the
11 child has told law enforcement; right?

12 A. I -- in the -- in the recent books that have been put out,
13 there's a good emphasis on getting other information.

14 Q. Are --

15 A. Not just interviewing, but looking at other data.

16 Q. And you look at all of the data in the case, not just the
17 interview, to determine whether the information provided by the
18 child is reliable; right?

19 A. If you're doing an evaluation for alleged child sex abuse,
20 that's absolutely true.

21 Q. Are you aware of the corroborating information that --
22 seized in this case?

23 A. Purposely unaware. I wanted to just focus on the
24 interviews.

25 Q. So you don't know, for example, what was seized from the

1 defendant's house in this case; is that right?

2 A. Only by implication. I don't know any exact information at
3 all.

4 Q. You don't know what was on the computer in the defendant's
5 house, do you?

6 A. I do not.

7 Q. You haven't seen any of the images that were recovered in
8 this case, have you?

9 A. From the computers?

10 Q. Yes, sir?

11 A. No, I have not.

12 Q. Have you seen any of the photographs, hard copy
13 photographs, recovered from the defendant's house in this case?

14 A. The only photographs I saw I think were of a headboard of a
15 bed and a picture of a house. But nothing beyond that.

16 Q. And, in fact, you saw the headboard of a bed with sort of
17 wooden carved flowers in it; is that right?

18 A. It looked that way to me, yes.

19 Q. And, in fact, that's a -- that headboard, the description
20 of that headboard is something that several of the girls
21 spontaneously provided to law enforcement in these interviews,
22 isn't it?

23 A. I don't know what they provided to law enforcement. In one
24 of the interviews I read, I think someone referred to it as an
25 animal carving.

1 Q. Well, we'll go through it. But there's spontaneous
2 statements from several of the victims regarding the floral
3 carvings and the headboard; isn't that correct?

4 A. If it's in an arrest report -- not arrest, but
5 investigative report, I don't know.

6 Q. No, I am referring to the same thing that you are. My
7 understanding is you reviewed the transcripts of the interviews
8 of the victims in this case; is that right?

9 A. Yes. Correct.

10 Q. And you saw a photograph of the bed and --

11 A. Correct.

12 Q. -- and you saw a photograph of the house?

13 A. Correct.

14 Q. And that is the universe of materials that you have
15 examined in this case; is that right?

16 A. I believe it is. There may have been another photograph,
17 but I don't remember what it was. Those, you know . . .

18 Q. You don't know --

19 A. No.

20 Q. If you were shown another photograph, you don't recall what
21 was in it?

22 A. No.

23 Q. Now, Doctor, I'd like to ask you a couple of questions
24 about your background.

25 You do primarily forensic work now; is that correct?

1 A. I primarily do correctional work, but I do forensic work,
2 yes.

3 Q. By correctional work, you provide mental health counseling
4 to inmates at the jail?

5 A. Well, programming, counseling, assessment, yes.

6 Q. Those are adults who are incarcerated?

7 A. Correct.

8 Q. And have you published within the last ten years in any of
9 the major journals that address child sexual abuse?

10 A. No.

11 Q. You're not on the editorial board of any of those journals?

12 A. No, I'm not.

13 Q. Are you aware of what is the Journal For The International
14 Society For Traumatic Stress Studies?

15 A. I'm aware of that journal, yes.

16 Q. Have you published in it?

17 A. No.

18 Q. How about the American Professional Society Against the
19 Abuse of Children?

20 A. No.

21 Q. Have you published in that journal?

22 A. No.

23 Q. You're not on the board of that journal?

24 A. No, I'm not.

25 Q. In fact, as you -- as you said on direct examination, you

1 do many fewer cases in the area of child abuse than you used to.

2 Would that be fair to say?

3 A. That is correct, yes.

4 Q. And your experience in interviewing children is often in
5 dependency court; is that right?

6 A. Yes.

7 Q. Those are not necessarily criminal cases, right?

8 A. They are -- they are independent of criminal cases, but
9 there may be a criminal case parallel to it.

10 Q. There may or there may not be?

11 A. Correct.

12 Q. You also mentioned you work on the Sexually Violent
13 Predator Panel. That's doing evaluations of the predator, not
14 the child; right?

15 A. That's correct.

16 Q. And also your work on the Mentally Disordered Offender
17 Panel, same thing, that's focusing on the mental health of the
18 offender, not of the child victim; right?

19 A. In both those cases, mental health and risk, yes.

20 Q. Now, Doctor, several times during your direct examination,
21 you mentioned young children, very young children. Doesn't the
22 research show that children from age 11 on up are no more
23 suggestible than adults are?

24 A. Well, I think the model that is referred to most is by
25 Piaget, and by age 11 to about 14, normal children develop what

1 is hypothetical deductive reasoning. It's the same reasoning
2 adults use. You make observations, you make a conclusion about
3 it, you can test things out. Younger children can't really do
4 that.

5 Q. So studies focusing on the suggestibility of children in
6 the four, five, six-year-old range really would have no
7 application to children who are, say, between the ages of 11 and
8 14; is that right?

9 A. Well, even adults, everybody is vulnerable to
10 suggestibility. So they are in a better place than younger
11 children for sure.

12 Q. They're in the same place that you and I are essentially as
13 adults regarding suggestibility; right?

14 A. They have the cognitive mechanics that we have, but with
15 experience and so forth and so on, there is still a difference.

16 Q. Doctor, can you cite me any peer-reviewed study that
17 compares the suggestibility of someone between the ages of 11
18 and 14 and the suggestibility of an adult and concludes that
19 somehow they are more suggestible than adults are?

20 A. I think a study by Steven Ceci and Elizabeth Loftus. I
21 can't give you the cite for it, but it discusses those issues of
22 suggestibility. Loftus actually discusses them with adults as
23 well.

24 Q. Loftus focuses on suggestibility of adults?

25 A. More so, yes.

1 Q. And in fact, almost all of the suggestibility research is
2 on children under the age of seven; isn't that correct?

3 A. I don't believe that is correct. But the focus really was
4 on young children to start with, but it expanded beyond that.

5 Q. Okay.

6 So -- and that's based on the Loftus study that you
7 just cited; is that right?

8 A. That's just one that I remember, but Steven Ceci and
9 Brock -- I think Maggie Brock wrote a book that was published by
10 the American Psychological Association, which is fairly rare,
11 called *Jeopardy in the Courtroom*. And it's a scientific study
12 or scientific analysis of sexual abuse allegations. And they
13 cite hundreds of studies in that book and it's pretty expansive.
14 It's not limited to just young children.

15 Q. And does that study say that children in the range of 11 to
16 14 are more suggestible than adults?

17 A. I can't tell you exactly if it says that. The implication
18 is that with increased sophistication, you're less suggestible.

19 Q. So a more sophisticated adult is less suggestible than a --
20 someone -- an adult with lesser sophistication?

21 A. Yes.

22 Q. Doctor, you talked about word count, and I think you
23 counted up some of the words in one of the interviews.

24 Are there any peer-reviewed studies that correlate the
25 number of words used in an interview with the reliability of the

1 information provided by the child being interviewed?

2 A. I don't know if there are peer review studies on that.

3 Q. Have you done any empirical study yourself of that?

4 A. In another case I did, but in -- could not submit it for
5 publication because of the case.

6 Q. You also mentioned that the number of times that a child
7 has been interviewed can make a difference?

8 A. Yes.

9 Q. Can you cite any peer-reviewed articles that discuss how
10 many times is too many times?

11 A. I believe in the -- the Katherine Kuehnle book -- I don't
12 know the pronunciation of her name -- but that was published in
13 1996. And she does comment on that issue in there and does cite
14 studies. I can't tell you which ones they are.

15 Q. So is there some number which is considered the cutoff
16 point beyond which there are too many interviews --

17 A. No.

18 Q. -- and the subsequent interviews are unreliable?

19 A. No. You'd have to look -- the number of words put out is a
20 structure issue. Then you look at the process, then you look at
21 the content. So none of these in isolation are going to give
22 you the final answer.

23 Q. But specifically looking at the number of times the child
24 has been interviewed -- you mentioned dozens and dozens of times
25 in one instance, you mentioned 69 times in another instance.

1 Is there some sort of benchmark or number that your
2 profession looks at to determine after what point the interview
3 is no longer reliable?

4 A. No. You'd have to look at the child's age, their level of
5 intellectual functioning. There is a whole bunch of variables
6 involved in that. Most critically is the content of what was in
7 those previous interviews.

8 In a case in San Diego, the Court allowed me pretty
9 broad access and I got data from therapy groups, so forth and so
10 on. The minimum time that any child was talked to by other
11 people was 69 and the highest was 144. So when I went to look
12 at it, the same material is talked about in these interviews,
13 you know, repetitively.

14 Q. So if a child has been interviewed 69 times about the same
15 thing, then you would question whether maybe on the 70th run,
16 you're getting any spontaneous information?

17 A. Exactly. But I don't think there is any magic to the
18 number.

19 Q. Are you aware of the number of prior interviews that were
20 done on the -- had been conducted of the victims in this case?

21 A. No, I'm not.

22 Q. Let's talk about some of those interviews. Do you have
23 transcripts of those interviews with you?

24 A. I do not have all of them. I have a whole box of . . .

25 Q. Let's talk about the interview of -- her name is NTDx.

1 It's N-T-D-x. That's an interview that was done on November 3rd
2 of 2006.

3 A. I do not have that with me, but we can certainly talk about
4 it.

5 Q. I have got an extra copy.

6 Your Honor, could we just give him a copy of the
7 transcript --

8 THE COURT: Certainly.

9 THE AGENT: May I? Doctor, this is for you and
10 they're each tabbed --

11 THE WITNESS: Okay. Thank you.

12 BY MS. DONAHUE:

13 Q. You should have in front of you a transcript of an
14 interview done on November 3rd, 2006, from 4:10 p.m. until 5:55
15 p.m.

16 A. Yes. I think I do have this but I have it labeled as NTD.

17 Q. Yes. Those are her initials.

18 And there were four people present at this interview;
19 is that correct?

20 A. I believe so. Well, actually in the note it says six
21 people at interview.

22 Q. That's the -- because the note double-counted an
23 interpreter with one of the participants.

24 This is an interview. The child was there, Special
25 Agent Hung Nguyen was there, Vansak Suos from the State

1 Department was there, and a child counselor by the name of Sook,
2 that's S-O-O-K, Sinh, S-I-N-H, was there; is that right?

3 A. Yes.

4 Q. In fact, this interview was conducted in Vietnamese; isn't
5 that right? This is the interview that you referred to on
6 direct examination when you said there was no translation?

7 A. Yes. Okay. Fine.

8 Q. The interviewer went straight from -- spoke in Vietnamese,
9 and the victim also spoke in Vietnamese; is that right?

10 A. It appears that way, yes.

11 Q. And if I can have you turn to Page 10 of the transcript.

12 A. Yes.

13 Q. NTDx, the girl who is being interviewed, raises the subject
14 of Mrs. Khia, K-H-I-A; isn't that right?

15 A. Yes.

16 Q. That Ms. Khia is not a person whom the interviewer
17 suggested to her; correct?

18 A. She brings it up.

19 Q. It's a spontaneous statement from her, she brings up the
20 topic of Ms. Khia. The interviewer doesn't say, "Mrs. Khia is
21 the person who brought you"; right?

22 A. It's spontaneous if you went back and determined that no
23 investigative officer or anyone else ever brought it up.

24 Q. And this interview was on November 3rd of 2006; right?
25 That's the date on the front of the transcript?

1 A. Yes.

2 Q. And are you familiar with the circumstances under which
3 this girl was rescued and brought to law enforcement for an
4 interview?

5 A. No, I'm not.

6 Q. I would like to turn your attention to Page 11 of the
7 transcript, near the bottom of the page.

8 A. Yes.

9 Q. In fact, the second to the bottom, she is asked about the
10 house and she volunteers the house had a plum tree and a custard
11 apple tree in front.

12 That's volunteered information, right?

13 A. Again, if it wasn't brought up previously, yes.

14 Q. In fact, this interview, Doctor, of NTDx is replete with
15 information that certainly is not suggested by Special Agent
16 Nguyen in this interview; right?

17 A. Not in the interview, that's correct.

18 Q. So if there was suggestibility going on here, your
19 testimony is that it must be because she got it from an outside
20 source before this interview?

21 A. Yeah. In the words we're using before, it is a form of
22 suggestibility, but it would be contamination. That she already
23 knew this.

24 Q. You're not saying that this interview -- that this was a
25 suggestible interview; you're saying that there could have been

1 contamination -- you're speculating there may have been
2 contamination, but you don't know?

3 A. It is -- it is possible. I have some notes on this
4 interview.

5 Q. Well, that's not my question, Doctor. My question is
6 you're speculating that this may be contaminated by other
7 interviews of which you're unaware; is that right?

8 A. It's certainly a possibility, yes.

9 Q. I would like to just turn your attention to Page 15.
10 Again, near the bottom of the page, you can see the agent's
11 question is, "Then what happened?"

12 And she goes on to say in detail: "I fought back, he
13 hit me. He was afraid of my screams."

14 That's not something that the agent suggested to her,
15 is it?

16 A. Not in the context of this interview.

17 Q. He's not the one who raises the subject of pressing the
18 pillow on her face until she couldn't breathe, is he?

19 A. That's true.

20 Q. And if you can turn to Page 16 of that interview, about
21 two-thirds of the way down the page the agent says when you say
22 that he, quote, went, close quote with you, what exactly did he
23 do?

24 That would be an example of an open question; right?

25 A. Yeah. That's -- there's nothing in that question that

1 provides the answer.

2 Q. And in fact, when you interview a child, once you get
3 the -- you ask the open questions, you do have to follow up with
4 more pointed questions in order to draw out all of the details
5 about the sexual abuse; isn't that true?

6 A. Yes. As long as you don't provide the answer in the
7 question.

8 Q. For example, by saying, "When you say that he went with
9 you, what exactly did he do."

10 And then I'd like to -- if you can just turn to the
11 next page of that interview, Page 17. Do you see at the top of
12 the page -- actually I'm -- the question at the very bottom of
13 Page 16, "And what was his bed like?"

14 A. Yes.

15 Q. She responds, "It has pictures" -- "What does the bed frame
16 look like?"

17 And she says, "It has pictures of flowers."

18 And the agent says, "Oh, it has photos of flowers
19 displayed on it?"

20 And she corrects him and says, "No, the flowers are
21 imprinted into the wood, they're carved into the wood."

22 She is describing the headboard of the bed. Obviously
23 the agent doesn't know or didn't lead her and doesn't know what
24 it looks like; correct?

25 A. That's correct.

1 MR. BROWN: Objection.

2 THE COURT: Overruled.

3 BY MS. DONAHUE:

4 Q. If you can turn to the next page of that interview,
5 Page 18, look about -- it's near counter No. 38. It's about a
6 third of the way down on the page. The agent says to her, "When
7 he finished, what else did he do to you?" Arguably a leading
8 question; right? Suggesting that he did something else to her?

9 A. It does suggest that but it isn't egregious in any sense.

10 Q. And her answer, though, is "Nothing." She doesn't take
11 the -- take it as a leading question. She responds, "Nothing."

12 A. She said when he finished, she took a bath and went
13 downstairs.

14 Q. And, in fact, this interview of NTDx is really replete with
15 those examples. Doctor, I'll have you turn to Page 31 of the
16 interview.

17 MR. BROWN: Your Honor, just for the record I am going
18 to object to the prosecutor testifying.

19 THE COURT: I think statements like --

20 MS. DONAHUE: Sorry. I apologize. We will go through
21 it.

22 Q. Turning to Page 31, about a third of the way down the page
23 do you see the question, "Did he show you any photos of any
24 sort?"

25 A. Yes.

1 Q. In fact, two questions up from that do you see the
2 question, "When you were having sex with him or he with you, did
3 he photograph or videotape?"

4 A. Yes.

5 Q. Is that a leading question?

6 A. It could be but she doesn't respond to it that way.

7 Q. How does she respond?

8 A. She says, "No, he didn't. Never did."

9 Q. And then he asks about, "Did he show you photos of any
10 sort?"

11 And how does she respond?

12 A. "No. But he took me into the room belonging to the
13 children under his care," and so forth.

14 Q. That's new, spontaneous information provided by the victim,
15 isn't it?

16 A. It would appear to be. Again, with the qualifier that it
17 wasn't talked about before.

18 Q. It certainly wasn't talked about before in this interview?

19 A. Not in this interview that I recall.

20 Q. And further down the page, same page, Page 31 of this
21 interview, in response to the question, "When did Mrs. Khia tell
22 you when she" --

23 The answer, "When she was taking me to his house."

24 "What did she say?"

25 That's followed by a long narrative from the girl

1 about what Mrs. Khia told her, isn't it?

2 A. Yes.

3 Q. "She said if I behaved myself and he wanted to take me in,
4 he would spend a hundred dollars per month to take care of me.
5 If I cried, he would not want me."

6 A. Correct.

7 Q. "At that time I had no clue as to the way a man would care
8 for children. I only knew the way women cared for children, the
9 way my mom took care of me. I did not know he was an American."

10 That's all new information provided by her, isn't it?

11 A. If it's not somewhere else. In this interview, it is.

12 Q. You don't know whether this is the first time that she
13 spoke with ICE agents, do you?

14 A. No.

15 Q. It's the first interview, the first transcript; correct?

16 A. I believe it is.

17 Q. I would like to turn your attention to Page 32 of that
18 transcript. About a third of the way down, the question is
19 "When you were there, did he ever take a bath with you?"

20 And then she spontaneously provides the information,
21 "When I was pleasant and playful with him on the Saturday
22 morning before I left, that morning I was cheerful, and he did
23 not tie me up."

24 That's also spontaneous information from her, isn't
25 it?

1 A. In this interview, yes.

2 Q. And the agent again asks her, "so when he went with you,
3 did he do anything else besides inserting his into yours?"

4 And she responds, "He only put his inside mine";
5 right?

6 A. Correct.

7 Q. She doesn't take that opportunity to go and expand upon all
8 sorts of other activity?

9 A. No. But then the interviewer asked, "Did he lick you,
10 force you, etc.?"

11 That's obviously leading, but she says "No."

12 Q. And she had previously in this interview described how she
13 had been tied up and raped; isn't that correct?

14 A. That is.

15 Q. There is nothing in this interview of NTDx itself that
16 suggests to you that she was impermissibly led, is there,
17 Doctor?

18 A. Not in the context of this interview, that's correct.

19 Q. Well, as to her, that's the only thing that you
20 interviewed -- that you reviewed, excuse me; isn't that right?

21 A. Pardon?

22 Q. I'm sorry. As to this victim, this is the only material
23 that you've reviewed; isn't that correct?

24 A. That's correct. Yes.

25 Q. Now, if you -- do you have the transcripts of the

1 interviews of I.T. in front of you?

2 A. Which one?

3 Q. I.T., I.T., I period T period. You may have it up there as
4 I.T., I-T-x-x. It's also in the binder.

5 A. Let me just see if I have that. The title of it is I.T.?

6 Q. Actually -- or unknown child.

7 Could I have the agent help him, Your Honor?

8 THE COURT: Why don't we take our 15 minute break and
9 you can do it then.

10 Ladies and gentlemen, don't talk about the case or
11 form or express any opinions about the case until it's finally
12 submitted to you. We will take our 15 minute break.

13 (Recess taken)

14 (Jury In)

15 THE COURT: Everyone is back. Dr. Maloney, you are
16 still under oath.

17 Ms. Donahue, you may continue.

18 MS. DONAHUE: Thank you, Your Honor.

19 BY MS. DONAHUE:

20 Q. Dr. Maloney, you have before you now the interviews of
21 I.T.; is that right? She says, if you look at the first
22 interview, the first page, "What is your name?"

23 The phonetic I-T-x-x-x-x. I.T. is how you say it.

24 Do you see that?

25 A. On which page --

1 Q. Page 1. If you look at the first page of the first
2 interview.

3 A. Yes.

4 Q. And if you -- this is an interview that was done on
5 June 16th of 2006; is that correct? Do you see that?

6 A. Yes.

7 Q. Do you know whether this interview was done before or after
8 the search warrant was executed at the defendant's house?

9 A. No, I don't.

10 Q. Do you know where in the -- how long -- let me strike -- do
11 you know how long after I.T.'s initial disclosure this interview
12 was conducted?

13 A. No, I don't.

14 Q. Is this the interview you were referring to on direct
15 examination where you said there were a number of people
16 present?

17 A. This is one of them, yes.

18 Q. And the people present were obviously I.T., Gary Phillips,
19 Special Agent Phillips from Immigration and Customs Enforcement
20 who was doing the interview, Valorie Garcia, who is listed as a
21 child counseling agent.

22 A. Yes.

23 Q. And then there was a Vietnamese interpreter?

24 A. Correct.

25 Q. And two different Cambodian interpreters who came in and

1 out?

2 A. Correct.

3 Q. And that's it; right?

4 A. It says Unknown Males 1, 2 and 3.

5 Q. The transcript refers to unknown males as listing the
6 participants in front but, in fact, when you read the interview
7 you can see that those are actually the interpreters; right?

8 A. I believe so.

9 Q. So it's misleading. It looks like there are more people
10 there than there actually were if you were to just look at that
11 list of participants, right?

12 A. Yes.

13 MR. BROWN: Objection. Argumentative.

14 THE COURT: Overruled.

15 BY MS. DONAHUE:

16 Q. So it's I.T., the counselor, Special Agent Phillips, the
17 Vietnamese interpreter, and then two Cambodian interpreters who
18 actually, if you look in the interview, sort of switch out.

19 So six people total; right?

20 A. I believe that's correct.

21 Q. Okay.

22 And your understanding is they were using Vietnamese
23 and Khmer interpreters because they weren't sure which of the
24 two languages the child would be most fluent in; is that
25 correct?

1 A. I believe that's true.

2 Q. Some of these girls, although they live in Cambodia, are
3 from Vietnam; right?

4 A. Correct.

5 Q. If you can look at page -- near the beginning of the first
6 interview, Page 11, about halfway down the page, she's asked
7 what she wants to do when she grows up or what kind of job she
8 would prefer, and she says, "I like to sell rice noodles"?

9 A. Correct.

10 Q. And then further on down the page, the bottom of Page 11
11 and going over to the top of Page 12, the agent and the
12 interpreter offer her a variety of sporting activities and ask
13 if she likes any of them. And her answer is to reject all of
14 their suggestions about sporting activities and say, "I only
15 like to be with my maternal grandma"; isn't that correct?

16 A. Well, at the bottom of Page 11, she says yes to -- my guess
17 is to television. And then on Page 12 at the top she says, "I
18 like to be with my maternal grandma."

19 Q. So she shows an ability to reject all of the choices
20 offered by the interviewer and assert herself; right?

21 A. Yes.

22 Q. Despite the fact that there are a number of adults in the
23 room with her; isn't that right?

24 A. That's correct.

25 Q. If you could turn to Page 21 of that transcript. If you

1 look about halfway down the page, she's asked whether or not
2 Michael wears glasses and she says "No," but then she
3 spontaneously -- in fact, it says "adding" -- "when he went to
4 work, he wore glasses"; right?

5 A. Correct.

6 Q. So even as to a small detail, with all of the adults in the
7 room, she's still able to spontaneously provide information;
8 isn't that correct?

9 A. Correct. They ask her a number of questions following that
10 about the same issue, and she says she worked in his office, so
11 . . .

12 Q. And she volunteers that the office is upstairs --

13 A. Correct.

14 Q. -- in the house?

15 And she explains that he drives a car?

16 A. Correct.

17 Q. And if you could turn to the next page, Page 22. Near the
18 bottom of the page, she's asked, "Okay, does he speak Vietnamese
19 or Khmer?"

20 That's a question -- one of those choice questions you
21 talked about, right, where you give the child choose either A or
22 B?

23 A. Correct.

24 Q. And she doesn't choose either of those.

25 A. She responds, "He only speaks English, if necessary. The

1 boss lady speaks to him in English."

2 Q. So it's an instance where she is given a closed question, a
3 choice between A and B, and she rejects both choices offered by
4 the agent and say no, C is the right answer?

5 A. That's correct.

6 Q. Doesn't that demonstrate, despite all the people in the
7 room, an ability to listen to the question, think independently
8 of the true answer and provide it?

9 A. Yes.

10 Q. I'd like you to turn to the second interview. It says 2 of
11 3. It's just a continuation. They just changed tapes. At
12 Page 1. The question is about halfway down the page, it says,
13 "Can you describe the house for me?"

14 A. Is this an interview at 6/16/06? On the front it says
15 52:50?

16 Q. Yes, sir. Same interview, same day, just changing the
17 tapes, next transcript.

18 A. My copy starts at Page 3.

19 Q. Oh, okay. I apologize. Do you see about -- there about
20 two-thirds of the way down the page, "Can you describe the house
21 for me?"

22 A. This is on Page 3? I may be missing one interview in the
23 middle of this.

24 Yes.

25 Q. Do you see where that is?

1 A. Yes, I do.

2 Q. And at that point in the interview, the agent had not shown
3 her a photograph of the house; isn't that correct?

4 A. I'm not aware of that, but if that's the case.

5 Q. You have reviewed these transcripts --

6 A. Yes.

7 Q. -- and you haven't -- at this point in time he hadn't put
8 the photograph in front of her?

9 A. Not in the course of this interview, right.

10 Q. Then she proceeds to give a description?

11 A. Correct.

12 Q. If you can turn to the very bottom of Page 2, do you see
13 the question at counter 406, "Can you tell me what the inside of
14 the house looks like?"

15 A. Yes.

16 Q. She responds, "There was a large fish inside the house."

17 And the interpreter says, "He raised a big fish."

18 And I.T. interrupts and says, "No, it was not a real
19 fish. It was a wooden fish."

20 A. Correct.

21 Q. It shows she has the ability to interrupt the interpreter
22 and say no, that's not -- that's not the right answer. I'm
23 talking about a wooden fish?

24 A. Correct.

25 Q. If you can turn to Page 5 of that interview. And if you

1 look near the top of the page, again, as with NTDx, she explains
2 that the bed has carved floral designs on the bed.

3 Do you see that?

4 A. Yes.

5 Q. And then looking down near the bottom of the page, same
6 page, Page 5 of that interview, the -- the suggestion is made to
7 her, "Does he have body pillows?"

8 And she says, "No, no body pillows. Just two head
9 pillows on the bed."

10 A. Yes.

11 Q. And she's asked what's the color of the pillow, which is an
12 open question; right?

13 A. Yes.

14 Q. And she responds "Orange."

15 A. Correct.

16 Q. So at least these examples indicate to you, Doctor, that
17 she was asked open-ended questions and provided what you, I
18 believe referred to earlier, as spontaneous answers; isn't that
19 right?

20 A. Yes. The nature of these questions are neutral.

21 Q. She's describing the house --

22 A. Correct.

23 Q. -- where these things happened to her?

24 A. Correct.

25 Q. And by the way, do you know whether these descriptions

1 are -- that she gave of the bed and the house are accurate?

2 A. I don't know.

3 Q. In that same interview, if you can look at the bottom of
4 Page 15, going on to Page 16, do you see at counter 27:10,
5 Special Agent Phillips says, "Okay, what does that mean?"

6 And the interpreter says, "What does that mean?"

7 And the second interpreter says, "What did he do? Go
8 on, try to describe."

9 And she raises, "He blindfolded me."

10 A. Correct.

11 Q. And the interpreter is surprised and says "Huh?"

12 A. Yes.

13 Q. And then the interpreter says, "He blindfolded -- when he
14 put his penis inside I.T., he blindfolded her," and she responds
15 spontaneously, "He made me bite on a piece of cloth."

16 A. Correct.

17 Q. And the cloth is not a question that was -- he made me bite
18 on a piece of cloth is not an idea that was suggested to her?

19 A. Not in this interview, yes.

20 Q. So are -- you are speculating then that someone suggested
21 it to her in a prior interview?

22 A. I'm not speculating that that occurred. I'm simply saying
23 she may well have been interviewed about this material before.

24 Q. So if she was interviewed about this material before, then
25 is it your testimony that it wouldn't necessarily be believable

1 because she said it again in this interview?

2 A. No. I'm just simply saying in the context of this
3 interview, she is certainly saying things that are not being
4 told to her, which she may have been investigated or interviewed
5 previously and is reproducing what she said before.

6 Q. But at least in the context of this setting with this
7 number of adults, she is certainly providing spontaneous
8 information?

9 A. In the context of this interview, yes.

10 Q. Do you have before you the interview of L.K.xxx? That's
11 L-K-x-x-x-x-x. Do you have that one up there?

12 A. How is it described again?

13 Q. It would be L.K.xxx, L-K-x-x-x-x-x, and I am going to ask
14 Special Agent Phillips to go up and help you locate it.

15 THE COURT: Please.

16 THE AGENT: There you go, sir.

17 THE WITNESS: Okay. Thank you.

18 BY MS. DONAHUE:

19 Q. You can turn to -- her interview was done on June 20th --

20 A. Correct.

21 Q. -- of 2006.

22 And then there is an interview on June 26th of 2006;
23 isn't that correct?

24 A. Well, I have the first one here. Does the next one follow
25 right behind it?

1 Q. Yes. The next one follows behind it.

2 A. Yes.

3 Q. And obviously L.K.xxx was present at that interview. And
4 Special Agent Phillips. And Suos Vansak from the State
5 Department, an interpreter and then there was a second
6 interpreter, and they kind of switched out; isn't that right?

7 A. Hum --

8 Q. Suos Vansak and Va Tong essentially kind of switched out,
9 if you remember the tape.

10 A. Yes.

11 Q. And then there was someone running the camera from the
12 International Justice Mission; right?

13 A. It looks that way, yes.

14 Q. So there was a total, including the victim, of five people?

15 A. Yes.

16 Q. Now, during the interview on June 20th, L.K.xxx described
17 how she had been -- how the defendant had tied her up and raped
18 her; isn't that right?

19 A. Can you give me a page reference?

20 Q. Yes. I can. She justly described that during that first
21 interview, isn't that correct?

22 A. I believe it is, yes.

23 Q. And then in the second interview, on the 26 th, Special
24 Agent Phillips went back with some physical evidence that had
25 been seized from the house; isn't that correct?

1 A. I believe on the video of this he brought in some cloth and
2 what appeared to be maybe wires or something to that effect,
3 from memory.

4 Q. He -- and when he brought those items of physical evidence
5 in, that was not the first time that he had interviewed L.K.xxx,
6 was it?

7 A. I don't believe it was the first time.

8 Q. She -- he had already interviewed her and she had already
9 disclosed that she had been tied up; right?

10 A. Yes.

11 Q. And then he returned with physical evidence to ask her
12 if -- whether or not she recognized any of these ropes and cloth
13 that had been seized from the defendant's house; right?

14 A. I believe that's correct.

15 Q. In fact, she said she did not recognize the rope, but she
16 did recognize the cloth; isn't that correct?

17 A. I believe that's correct.

18 Q. Rejecting an item, saying no, that's not the rope,
19 certainly shows a resistance to suggestibility, doesn't it?

20 A. It could.

21 Q. You can take a look at the June 26th interview. It's
22 June 26th, '06, Page 18. If you'll look about two-thirds of the
23 way down the page, you can see the agent is asking her to --
24 about a bottle, a pink tube or a bottle?

25 A. Yes.

1 Q. And he says, "Can you draw it for me?"

2 And her answer is, "That bottle was in the cook's
3 room."

4 Do you see that?

5 A. Yes.

6 Q. That's not something that the agent suggested to her, is
7 it?

8 A. It doesn't appear to be in this interview.

9 Q. It looks in this interview like that's her spontaneous
10 statement about where the bottle of baby oil was located in the
11 house, isn't it?

12 A. Correct.

13 Q. If you could take a look -- and I'll ask Special
14 Agent Phillips to help you find it -- at the interview of K.S.x.

15 THE COURT: You may assist him.

16 MS. DONAHUE: Thank you, Your Honor.

17 Q. Do you have that before you, Doctor?

18 A. I do, yes.

19 Q. This was an interview that was done on September 27 of
20 2006; correct?

21 A. Correct.

22 Q. And the victim was present. The interviewer was Special
23 Agent Taecook Cho from Immigration and Customs Enforcement, and
24 there was a Cambodian interpreter and one Vietnamese
25 interpreter.

1 A. Correct.

2 Q. And that's it?

3 A. Yes.

4 Q. And do you know how this child came to the attention of law
5 enforcement on September 27 of 2006?

6 A. I do not, no.

7 Q. And do you know whether or not this was her first interview
8 regarding the defendant in this case?

9 A. I don't know that.

10 Q. And if you could turn to Page 6 of this transcript. She
11 describes where she lived, telling the agent she was in Sihanouk
12 Ville and before that she had been in Thailand; isn't that
13 correct?

14 A. Correct.

15 Q. And at least based on this interview, that certainly
16 doesn't appear to be anything that was suggested by the agent;
17 is that correct?

18 A. In the context of this interview, yes, it is.

19 Q. If you would turn to Page 11, if you look about a third of
20 the way down the page at counter 19:28 she explains how she went
21 from living with her parents to be in Sihanouk Ville?

22 A. Correct.

23 Q. And, again, that background does not appear to be something
24 that the agents are feeding to her?

25 A. That's correct.

1 Q. And if you turn to Page 14, the same would be true
2 regarding the activities that she likes to do in her spare time;
3 isn't that correct?

4 A. Watching television and so forth, yes.

5 Q. If you turn to Page 15, the agent asks her if she knows an
6 American, and she identifies him as Michael; isn't that right?
7 The agent doesn't tell her that his name is Michael.

8 A. On which page are you --

9 Q. I'm sorry. Page 15, about halfway down the page.

10 A. That's correct.

11 Q. If you can turn -- if you'd turn near the end of that
12 interview to Page 48, if you see she's asking -- actually, if
13 you look near the top, the agent is asking about whether or not
14 the defendant ever took photographs of her. Do you see, "Did he
15 ever print naked photos of you which he took?" Answer: "No."

16 She rejects that notion, and she's asked again, "How
17 about printout photos without clothes on? Did he have your
18 photos without clothes?" Answer: "No."

19 A. Yes.

20 Q. Doctor, a couple more I'd like you to take a look at. The
21 interview of S.R.xxx, S-R-x-x-x-x-x. If I could have Special
22 Agent Phillips approach to --

23 A. I have it here.

24 Q. You have it there?

25 A. 6/20/06 --

1 Q. 6/20 --

2 A. 29:56.

3 Q. This is the girl who volunteers upfront that the doctor
4 says one of her legs is broken and then tells the agent that she
5 was just kidding.

6 Do you see that? That's on Page 1 of the first
7 transcript?

8 A. Yes.

9 Q. She doesn't appear to be a child who is intimidated by the
10 people in the room, does she?

11 A. Not at this point, no.

12 Q. The people who were there were obviously S.R.xxx, Special
13 Agent Phillips, Suos Vansak from the state department, who also
14 acted as an interpreter, a man from the International Justice
15 Mission. So that's four people; right?

16 A. It has Unknown Male 1 and 2.

17 Q. That's because it's duplicated -- those are the
18 interpreters, Mr. Suos Vansak and the man from the International
19 Justice Mission, if you look in the transcript, right?

20 A. If they are duplicates, sure.

21 Q. Well, you have seen the tape.

22 A. I have seen the tapes but in most of them, it was just a
23 shot of the alleged victim and the interviewer and maybe a
24 translator, but there were other people I couldn't see.

25 Q. And the transcript lists, like here the man from the

1 International Justice Mission, Ming Lang, who obviously was
2 operating the video camera?

3 A. Yes.

4 Q. And so she -- she -- she jokes about having the broken leg,
5 and then if you can go a little further into that transcript to
6 Page 5, if you look about a fourth of the way down the page at
7 counter 8:41?

8 A. Yes.

9 Q. She's asked about the school she attends and whether or not
10 it's far from the house. And she spontaneously says, "Oh, I
11 remember now. It's the Tool Court No. 2 school."

12 A. Correct.

13 Q. Which is certainly not something the agent had mentioned to
14 her earlier, is it?

15 A. Not that I can tell in this interview, no.

16 Q. If you look at Page 11 of this interview if you look down
17 at count -- about halfway down the page at counter 22:43,
18 Special Agent Phillips asks, "Can you tell me what Michael looks
19 like?"

20 A. Yes.

21 Q. And she volunteers that he's fat and she volunteers that he
22 has a mole.

23 A. Yes.

24 Q. And then she proceeds to point to it, the area on her body
25 where the mole is located; right?

1 A. Yes.

2 Q. That's not information that is provided to her earlier in
3 this interview; isn't that correct?

4 A. Not in this interview, that's correct.

5 Q. If you can move a little further into that transcript to
6 Page 22, if you look about two-thirds of the way down the page,
7 she's being asked to try to remember, there are pictures, there
8 are photographs in Michael's house?

9 A. Yes.

10 Q. And you see she says downstairs there are pictures and then
11 she says it has a cabinet. She volunteers the information about
12 the cabinet in the house; isn't that right?

13 A. That's correct.

14 Q. If you go a couple more pages into that transcript at
15 Page 24, she is describing the -- Michael's room.

16 A. Yes.

17 Q. And she explains that he keeps rope in there tying kids'
18 hands and legs; isn't that right?

19 A. Yes.

20 Q. And that's her explanation?

21 A. She says rope, toys, yes.

22 Q. If you turn a little further into that transcript at
23 Page 28, near the top of the page Special Agent Phillips says to
24 her, "And what is oral sex? What is it?"

25 The interpreter tells her to tell it straight out.

1 And she says, "Eating penis."

2 Those are her words; right?

3 A. Yes.

4 Q. If you turn to Page -- further down to Page 23 in that
5 transcript --

6 A. Which page?

7 Q. Page 23. I'm sorry. 23. Near the bottom of the page,
8 it's at counter 46:29. Special Agent Phillips says to her,
9 "Besides yum-yum and massage, did you do anything else with
10 Michael?"

11 The interpreter, "Besides yum-yum and massage for
12 Michael, did you do anything else?" Answer: "No."

13 Do you see that?

14 A. Can you give me that page again?

15 Q. Certainly. 23.

16 A. 23?

17 Q. Yes.

18 A. On this 23 I have counters that look like 48:10, 48:27.

19 Q. I'm sorry. That may be the next set of transcripts for
20 S.R.xxx.

21 A. Okay. What was the counter again?

22 Q. 46:29.

23 A. Okay. And the question was that --

24 Q. You see where -- Special Agent Phillips asks her, as does
25 the -- and then the interpreter interprets whether, "Besides

1 yum-yum and massage, did you do anything else with Michael?"

2 And she says "No"; isn't that correct?

3 A. Yes.

4 And then someone says, "Did he ever touch you? Did
5 Michael ever touch you?"

6 And she says "Yes."

7 Q. And she describes it?

8 A. "How did he touch you?"

9 "Caress."

10 "Did he ever try to kiss you?"

11 "Yes."

12 Q. And then if you keep -- actually keep going, if you look at
13 Page 26, about two-thirds of the way down the page at counter
14 51:47, Special Agent Phillips says, "Okay, did he ever boom boom
15 with you?"

16 Translation, "Did he ever boom boom with you?"

17 Answer: "No."

18 "How about with your sister?"

19 Answer: "No."

20 Do you see that?

21 A. I do, yes.

22 Q. So certainly this child was given the opportunity to
23 describe sexual conduct far in excess of the oral sex that she
24 did describe, wouldn't that be fair to say?

25 A. It appears that way, yes.

1 Q. And she didn't. She said no?

2 A. Correct.

3 Q. Doesn't that suggest at least -- I shouldn't say -- doesn't
4 that indicate to you a fair amount of resistance to any
5 suggestibility that did occur in the interview?

6 A. Yeah. I mean in the context of this interview, yes. But I
7 don't know what went on before. If this is repetition or not.

8 Q. But, Doctor, your entire testimony is based only on the
9 context of these interviews; isn't that right?

10 A. It's on the nature of these interviews.

11 Q. And it's what they say, what the interviewers say and what
12 the girls said, that's the -- your universe of information about
13 this case?

14 A. Yes. But on direct I said this is what you would call the
15 content part of an interview, and I -- based on these
16 interviews, where they took place and how they took place, I
17 can't say with firmness this is accurate or not accurate.

18 Q. Right. You can only say that when given -- presented with
19 the opportunity to describe more explicit sexual conduct that
20 could have happened to her, at least in this interview, she said
21 no?

22 A. That's correct.

23 Q. She described what she -- she gave a description of what
24 did happen and when asked what else happened, she stopped?

25 A. Correct.

1 Q. Okay.

2 And if you can take a look at the transcripts of the
3 interviews of T.C.xx, and these are interviews that were done on
4 August 25th of 2006.

5 Do you have those in front of you?

6 A. I'm searching. Yes.

7 Q. August 25th of 2006. And obviously the victim is present
8 and she's interviewed by Special Agent Taecook Cho and there is
9 a Cambodian interpreter present and Vietnamese interpreter;
10 correct?

11 A. Correct.

12 Q. So the victim and three other people?

13 A. Correct.

14 Q. And she actually starts almost immediately, if you look at
15 Page 1, by telling the agents that "It's cold in here," doesn't
16 she.

17 A. Correct.

18 Q. She speaks right up. Doesn't appear, at least initially,
19 to be intimidated by the law enforcement agents?

20 A. Well, she's certainly rubbing her arms and saying it's
21 cold.

22 Q. And if you would take a look at this transcript. If you
23 look, there are -- this -- there are five parts. If you look at
24 the second one, just the way the tapes are broken up -- if you
25 look at the second one, it's August 25th, start call duration is

1 31:53.

2 A. Yes.

3 Q. Page 1. About halfway down the page, she's asked, "Can you
4 read and write in Vietnamese?"

5 A. Yes.

6 Q. And she says, "I cannot write in Vietnamese," but she goes
7 on and volunteers information and says, "I can write in Khmer
8 and in English"; isn't that right?

9 A. Correct.

10 Q. And if you look a little further into that transcript at
11 Page 4, near the bottom of the page, she says she knows Michael.

12 And the agent says "Who else?"

13 And she says, "A Mr. Bobbo."

14 And the agent says, "Oh. Is that the same person --
15 are Bobbo and Michael the same people?"

16 And she says, "No, no. Different people."

17 A. Correct.

18 Q. She rejects any suggestion that they're the same people;
19 isn't that correct?

20 A. Correct.

21 Q. And then when you get into the sexual conduct, if you turn
22 to Page 9 of that transcript, about halfway down the page, the
23 question is, "Then what happened?"

24 A. Correct.

25 Q. And she describes feeling sleepy. "He came in. He shut

1 the door. He tied my hands and feet. When I woke up, I saw the
2 blood."

3 That's not something that's suggested to her in this
4 interview, is it, Doctor?

5 A. Not in this interview, correct.

6 Q. And you don't know whether she had ever been interviewed by
7 anyone about her contacts with the defendant in this case before
8 this interview, do you?

9 A. I don't know.

10 Q. If you look at Page 11 of this interview. If you look
11 about halfway down the page, she's asked, "Did you have your
12 clothes on --

13 A. Yes.

14 Q. -- or off."

15 And she volunteers, "I only had the top."

16 A. Correct.

17 Q. That's not something that was suggested to her by the
18 agents?

19 A. Well, in the interview right before that: "How were you
20 dressed?" And the Cambodian says at that time what about her
21 clothing. The Vietnamese: "Do you have clothes on?"

22 Then "Yes."

23 "So you were dressed? You're clothes were not off?"

24 "I only had the top."

25 Q. Nobody suggested to her that she was only wearing a top?

1 A. No, but the question right before that, so you were
2 dressed, is a challenge. "Your clothes were not off." So she
3 gives an in-between response.

4 Q. To a direct challenge?

5 A. Correct.

6 Q. I'd like you to turn to Page 14 of this interview. If you
7 look about two-thirds of the way down the page, she's asked,
8 "How are his eyes?"

9 Do you see that?

10 A. Yes.

11 Q. And how does she respond?

12 A. "They look like cat's eyes."

13 Q. That would certainly be an example of a spontaneous
14 statement, wouldn't it?

15 A. It could be. It might have been good to ask why they look
16 like cat eyes. The Vietnamese interpreter was giggling when she
17 said that, so . . .

18 Q. It made the Vietnamese interpreter laugh. Certainly nobody
19 suggested to T.C.xx that the person who raped her had cat's
20 eyes?

21 A. No, they didn't. But again that's a question that could
22 easily have been followed up upon.

23 Q. But that doesn't change the fact that she spontaneously
24 provided the information?

25 A. Correct.

1 Q. So, Doctor, essentially your testimony is that all of these
2 interviews should be placed in context with the rest of the
3 evidence in the case; is that right?

4 A. Correct.

5 Q. And that looking at them in isolation really isn't
6 necessarily all that informative, is it?

7 A. It does. What we have done is select out parts that
8 present certain issues. There are other parts that are fairly
9 egregious.

10 Q. And the -- but certainly the entire interview is not
11 egregious; right?

12 A. Not all of them.

13 Q. Not one entire interview of any of them is egregious?

14 A. No. Not every single interchange, certainly not.

15 Q. And you can point to excerpts that show open-ended
16 questions; isn't that right?

17 A. Yes.

18 Q. And you can point to excerpts that show leading questions;
19 right?

20 A. Leading and suggesting, all the things that we have talked
21 about, you can show all of them.

22 Q. And there are portions in these interviews where the
23 suggestion is taken by the -- by the victim; isn't that right?

24 A. Yes.

25 Q. There are places where the victim rejects the suggestion;

1 isn't that right?

2 A. Correct.

3 Q. There are places where the victim provides spontaneous
4 information; isn't that right?

5 A. Correct.

6 Q. So sometimes they follow the lead and sometimes they offer
7 up their own information?

8 A. That's correct.

9 Q. Is there some sort of percentage of open questions or
10 suggestible questions that we're supposed to look for to
11 determine whether or not these interviews are valid?

12 A. There is no percentage. I'm not aware of anyone ever
13 suggesting that kind of thing.

14 Q. There is no sort of national average for the percentage of
15 open questions that are necessary in order to make an interview
16 valid, is there, Doctor?

17 A. Not at all.

18 MS. DONAHUE: I have no further questions.

19 THE COURT: Redirect?

20 MR. BROWN: Your Honor, I do have some transcript
21 excerpts that I would like the jury to have to follow along. I
22 was also intending to play portions of the video and I do have
23 copies for the Court and they are labeled. Counsel already has
24 a copy. I was wondering if I could -- and also for the witness,
25 Your Honor.

1 THE COURT: Okay.

2 MR. BROWN: May I approach?

3 THE COURT: Yes.

4 MR. BROWN: This stack is for the jury. There's three
5 witnesses. This is for the Court and for the witness.

6 THE COURT: I don't know what you're doing but you
7 need to stop it.

8 THE CLERK: Which one did you have first? I.T.?

9 MR. BROWN: I believe there is one for I.T..

10 THE CLERK: Is that the first one?

11 MR. BROWN: I.T. is marked Government Exhibit 172.

12 THE CLERK: Which one are you playing first?

13 MR. BROWN: T.C.xx.

14 THE COURT: Let's hand them all out together so we
15 don't take up extra time doing this. And I am going to ask the
16 agents to help my CRD get those together and pass those out or
17 Mr. Brown can do it, but somebody needs to move this along. I
18 guess the jurors are helping themselves. Thank you. Do they
19 have all of the stuff from all these folders?

20 MR. BROWN: I believe there may be some extra copies.

21 THE COURT: I do I have three identical things for
22 I.T.? Is there only one thing for I.T.?

23 MR. BROWN: Yes. There is only one thing for I.T..

24 THE COURT: So why do I have three in my folder?

25 MR. BROWN: It might have been an error on my part,

1 Your Honor. I do have --

2 THE COURT: Okay. And I have three for K.S.x.

3 MR. BROWN: That's right, Your Honor. I think each
4 witness has three copies -- one for the Court, one for the
5 witness and one for the clerk, Your Honor.

6 THE COURT: Okay. So you were supposed to give one
7 each to you, me and the witness.

8 THE CLERK: He has one.

9 MR. BROWN: And I believe the Government counsel
10 already has a copy.

11 MS. DONAHUE: I do.

12 THE COURT: So there is one I.T., one K.S.x and one
13 T.C.xx.

14 MR. BROWN: That's correct.

15 THE COURT: All right. Everybody have each of one of
16 those? Great. All right, Mr. Brown.

17 MR. BROWN: Thank you very much, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. BROWN:

20 Q. Before we get into the transcripts, I want to backtrack a
21 little bit. The prosecutor was asking you about the
22 developmental -- the level of development for an 11-year-old to
23 a 14-year-old.

24 Do you remember that discussion?

25 A. Yes.

1 Q. You referred to a study or concept, I forget the name. It
2 was developmental stages for children?

3 A. Correct.

4 Q. What was the name of that?

5 A. P-i-a-g-e-t.

6 Q. Could you just kind of summarize those different stages of
7 development again for the jury.

8 A. Well --

9 THE COURT: Development with regard to what?

10 BY MR. BROWN:

11 Q. With respect to childhood -- does it measure intellectual
12 function?

13 A. It's not a measure. It's a description of intellectual
14 structure and how it changes. So the first period is called
15 sensory motor intelligence and that's from birth to about 18
16 months. And during that period of time, there is not a lot of
17 independent thought processing with a child. They're exploring
18 their environment, bumping into things, reaching out and
19 building up neural networks to represent the world. And that
20 period ends with the introduction of language. So if you have
21 children that are very quick with the development of language,
22 that period is going to be shorter than 18 months. But it ends
23 with the development of language.

24 And then you have a period that they call
25 pre-operational thought. A child starts to use words to

1 represent the world. And in that period, the ability to
2 identify objects, to talk about objects, to use the language,
3 increase the vocabulary is what goes on.

4 And then the close of that phase, maybe six, seven
5 years of age, the child has concrete operations. At this point
6 they can start thinking about things not immediately there.
7 They can use words to describe how things might work together.

8 And then that period ends at 11, 12, around that range
9 with what we were talking about on cross, which is hypothetical
10 deductive reasoning, which all that really means is you make
11 observations, you can develop ideas to figure out what is going
12 on with that set of operations and then act accordingly or
13 predict accordingly.

14 And we were -- that's the structure of it. And as we
15 get older, as we become more skilled with our words and our
16 interchange, you get more sophisticated. But the basic
17 mechanics are there about 11, 12 years of age.

18 Q. So when Ms. Donahue asks you if a person who is 11 to 14 is
19 the same as an adult, common sense says that a 12-year-old is
20 not the same as someone who is 50 years old in terms of their
21 development and cognitive function; isn't that fair to say?

22 A. The mechanics are there but over time you get more
23 experienced, you learn more tricks of the trade, so forth,
24 you're not identical, no.

25 Q. Is education a function -- a person's educational level a

1 function of their level of sophistication and reasoning
2 abilities?

3 A. Not necessarily.

4 Q. So if you have a 12-year-old who is in the first grade, is
5 that an indicator of where they are in terms of their ability
6 to -- to process?

7 A. It could be. But frankly when I was reading these and the
8 girl said "I'm in the first grade," so forth, I don't know
9 enough about that system of education to know what that means.
10 In this country, if you were 12 years old and in the first
11 grade, there would be some kind of implication that you may have
12 had trouble, but I can't say that in Cambodia or Vietnam.

13 Q. On cross-examination there was a discussion about what you
14 knew or did not know about how many times these girls had been
15 interviewed before they were videotaped.

16 Do you recall that discussion?

17 A. Yes, I do.

18 Q. Doctor, if I told you that the girls in this case had been
19 removed from their mothers and taken to a shelter and
20 interviewed by counselors at the shelter and other individuals,
21 would that be an indicator or factor that there was some prior
22 interviews going on?

23 A. It could be.

24 MS. DONAHUE: Objection. That misstates the evidence.

25 THE COURT: That's not an appropriate question, as you

1 phrased it, and I don't think you meant to phrase it that way.

2 MR. BROWN: Fair enough.

3 Q. If I told you that the girls had been taken to a shelter
4 and interviewed by non-governmental shelter officials, does that
5 potentially increase the risk that you have described?

6 A. Depending on what went on.

7 MS. DONAHUE: Objection. That also mis -- badly
8 misstates the evidence.

9 THE COURT: He's asking a question. He is not stating
10 the evidence. The jury will decide whether that states it
11 properly or not. The answer will stand.

12 BY MR. BROWN:

13 Q. If you could repeat your answer, Dr. Maloney. I'm sorry.

14 A. It could well be, depending on what went on in those
15 discussions or interviews.

16 Q. The Government just asked you a question relating to
17 T.C.xx, the young woman T.C.xx. And I'd like to, if you could,
18 look at what has been marked as Defense Exhibit 171, Doctor.

19 A. Yes.

20 Q. If you could turn to what's handwritten in there, it's
21 really the third page but it says Page 14 in my handwriting.

22 A. Yes.

23 Q. That's the portion where T.C.xx describes the perpetrator
24 as having cat eyes and as being fat; right?

25 A. Yes.

1 Q. Okay. I'd like to, if I could, just play that -- a portion
2 of that.

3 Your Honor, if I may publish?

4 THE COURT: You may.

5 MR. BROWN: I apologize to the Court, Your Honor. I
6 seem to be having some technical difficulties. If I could
7 perhaps ask Agent Wang for a little bit of assistance.

8 I apologize to the court.

9 THE COURT: That's okay.

10 MR. BROWN: For the record, I am playing -- I'm trying
11 to start at counter 28 minutes exactly, give or take a few
12 seconds.

13 THE COURT: Okay.

14 MR. BROWN: Of Volume 2 of 5.

15 Q. First of all, Dr. Maloney, how many people do you see on
16 that screen there?

17 A. Four.

18 Q. Okay.

19 (Whereupon, the video was played for the jury)

20 BY MR. BROWN:

21 Q. I am pausing it. This is an example where the agent asks a
22 question in English, it's translated from English to -- I'm
23 sorry -- it goes to the Cambodian interpreter who is sitting on
24 the left --

25 THE COURT: Mr. Brown, excuse me, but for the last

1 several questions this witness has no more expertise than our
2 jurors.

3 MR. BROWN: Very well, Your Honor. I apologize.

4 Q. Dr. Maloney, if I told you that the woman sitting next to
5 T.C.xx in that video is a Vietnamese interpreter, would you
6 accept that --

7 Can we stipulate to that?

8 A. Certainly.

9 MS. DONAHUE: Of course.

10 MR. BROWN: Can we also stipulate that she works for
11 World Hope International?

12 MS. DONAHUE: (Ms. Donahue nods head.)

13 (Whereupon, the video was played for the jury)

14 THE COURT: Do we have a transcript for this,
15 Mr. Brown?

16 MR. BROWN: It's the T.C.xx transcript, Your Honor.

17 THE COURT: It's not in the transcript you gave me.

18 MR. BROWN: I'm sorry, Your Honor. I think the
19 counter was at 29:07. If I could, Your Honor, I just want to
20 play to the end of this segment. I think there is another
21 perhaps minute and a half. I just need to make a point with
22 respect to the next segment.

23 THE COURT: All right, but you should have provided
24 transcripts. So you need to stick to the transcripts in the
25 future.

MR. BROWN: I apologize, Your Honor.

(Whereupon, the video was played for the jury)

MR. BROWN: Now I am just going to play the next portion of this for you, which is the next page on my excerpt.

(Whereupon, the video was played for the jury)

BY MR. BROWN:

Q. Dr. Maloney, in reviewing the transcripts and listening to what you saw -- listening to the video, the girl never described the person as having blue eyes, did she?

A. I didn't hear that.

Q. In the segment before where she describes the person as having cat eyes, she never mentioned the word blue, did she?

A. No, she didn't.

Q. So in this segment where the Cambodian interpreter, the individual sitting on left was recapping what was said, it's he that inserted the concept of blue eyes into the equation; isn't that true?

A. It appears so, unless there was a discussion off the record when they were changing the batteries.

Q. Okay.

So we have in this case the Cambodian interpreter introducing the concept of blue eyes and then --

(Whereupon, the video was played for the jury)

BY MR. BROWN:

Q. So, Dr. Maloney, based on your experience where you have

1 an interpreter introducing concepts into the interview, is that,
2 in your opinion, an example of an egregious suggestive
3 situation? What does that indicate to you?

4 A. Well, as I said, I mean, there could have been a discussion
5 off the record where that idea came up. If not, then there is
6 information being introduced by the interviewer.

7 Color of eyes, I am not sure I'd call it egregious or
8 very problematic. There is some cases, examples here, where
9 there is introduction of material regarding sexual behavior by
10 the interviewers, which I think is more problematic in a case
11 like this.

12 MR. BROWN: Okay. For the record, Your Honor, I am
13 going to the next portion of the T.C.xx transcript.

14 THE COURT: Thank you.

15 MR. BROWN: Which is Segment 5 of the August 25th
16 interview. Minute counter 11:58.

17 (Whereupon, the video was played for the jury)

18 MR. BROWN: I'm sorry, Your Honor.

19 Q. Dr. Maloney, if you could look at the transcript that's
20 referenced on Page 5 with the minute counter 11:58, do you see
21 that discussion in front of you there?

22 A. I do.

23 Q. Do you see the footnote that was placed there after the
24 Vietnamese interpreter describes the sexual -- alleged sexual
25 conduct?

1 A. When you say "footnote," I'm not sure what you're referring
2 to.

3 THE COURT: The line on the bottom.

4 THE WITNESS: Yes, I do.

5 BY MR. BROWN:

6 Q. Okay.

7 In that situation, the Cambodian interpreter is asking
8 the question at the top, every time the second, third and fourth
9 time and it uses the term "oral sex."

10 Do you see that?

11 A. Correct.

12 Q. And the Vietnamese interpreter uses language, according to
13 the translator, which is much more graphic than the question
14 that was asked.

15 Do you see that?

16 A. Yes.

17 Q. And the translator puts a footnote that says, "The VI" --
18 which is the Vietnamese interpreter -- "has a tendency to use
19 crude language in her interpretation."

20 Do you see that?

21 A. Yes.

22 Q. Is that in your mind -- in your opinion, does the changing
23 of the language somehow affect the quality of the interview in
24 that situation?

25 A. I think the issue here, when they're talking about the

1 girl, they use terms like "birdie." And when the Cambodian
2 interpreter asks "oral sex" and "caress you," then we get into a
3 more street-like vernacular, and I don't know how that
4 translates from Cambodian or Vietnamese, but "suck on his dick"
5 is a more primitive discussion of what's going on here.

6 And I notice that in other parts of these interviews,
7 that in talking about the alleged perpetrator, there is a subtle
8 derogatory use of language, whereas it is not used the other
9 way.

10 Q. Is that significant in your opinion?

11 A. It's hard to say, but if there are -- there are statements
12 that this guy has told other people and other girls have heard,
13 if they pitch him as a bad guy and then use, you know, cruder
14 language, that just reinforces that concept.

15 Q. Dr. Maloney, if we could turn to what has been marked as
16 Defense Exhibit 172, which is titled I.T.?

17 A. Yes.

18 Q. I'd like to play a portion of that.

19 And, Your Honor, I discussed this with Government
20 Counsel ahead of time. I am just going to play the first minute
21 of that. There is no transcript for that in the excerpt but I
22 did discuss that with the Government just to illustrate a point.

23 THE COURT: Okay.

24 (Whereupon, the video was played for the jury)

25 BY MR. BROWN:

1 Q. Dr. Maloney, we talked about the issue of environment and
2 interview setting. Based on what you have seen in that first 49
3 seconds of the I.T. interview, do you see anything that gives
4 you concern with respect to the nature of the environment that
5 she is being interviewed?

6 A. Well, there is a group of people there and this could well
7 be intimidating to this girl. The physical environment at least
8 has pictures and a plant, which the other one didn't.

9 Q. And normally when you interview a suspected victim of
10 abuse, do you have a caretaker -- do you have her sitting in a
11 caretaker's lap?

12 A. No.

13 Q. Why not?

14 A. A number of reasons. One is that the child may be apt to
15 please the caretaker or the person that is supportive and close
16 to them. And there may have been discussion before between them
17 and it just clouds the situation, really.

18 Q. And what about the people that were walking back and forth
19 on the screen that aren't on camera now? Is the noise and
20 background distraction a factor?

21 A. Well, that whole situation with a lot of people present can
22 well influence children.

23 Q. And in this case, it looks like the same -- I have my
24 mouse -- if you could follow on the screen there, I have my
25 mouse kind of circling the person who is the Vietnamese

1 interpreter from the other interview, Dr. Maloney. And if I
2 told you that this Vietnamese interpreter was not a government
3 agent but worked for the shelter where the alleged victim was
4 living and she was interpreting the questions of the Government
5 agent, is that a concern in terms of the risk of contamination
6 and suggestibility, in your mind?

7 A. Well, what we're looking for in an interpreter or anyone
8 else doing an interview is that they be objective, no a priori
9 bias -- a priori bias. And this raises that specter, has there
10 been any contact, is she in favor of a certain outcome.

11 Q. If I told you that the interpreter was, in fact, not -- did
12 have a priori bias and that the alleged victim referred to her
13 as sister and that they had known each other from before, would
14 that -- does that increase the risk?

15 MS. DONAHUE: Objection. Argumentative. Assumes just
16 erroneous facts as well as assuming facts not in evidence.

17 THE COURT: If they are not in evidence, then the jury
18 will disregard them.

19 You can't testify, Mr. Brown.

20 MR. BROWN: I'm sorry, Your Honor.

21 Q. In your mind, a priori bias from an interpreter is a
22 concern?

23 A. It would concern me, yes.

24 Q. I'm fast forwarding to counter 52:47, which is indicated on
25 the transcript as well. I hope this is right. Forward the

1 record. 52:39 is as close as I can get, Your Honor.

2 THE COURT: Okay.

3 (Whereupon, the video was played for the jury)

4 BY MR. BROWN:

5 Q. In that example, Dr. Maloney, the alleged victim is
6 presented a photograph; correct?

7 A. Correct.

8 Q. And she says that is not -- he is not the one; correct?

9 A. Yes.

10 Q. And later, on Agent Phillips.

11 (Whereupon, the video is played for the jury)

12 BY MR. BROWN:

13 Q. There is no question pending there from Agent Phillips, was
14 there, Dr. Maloney, in the segment leading up to the FVI on the
15 transcript, the female Vietnamese interpreter, she takes the
16 photo apparently and presents it to I.T. on her own; right?

17 A. It appears that way, yes.

18 Q. And on the transcript, it's in Vietnamese but she says,
19 "Daughter, look carefully, is he the one," after she had said --
20 well, strike that.

21 Did you note that, Dr. Maloney?

22 A. Yes.

23 Q. Is that, in your opinion, an indication of an egregious
24 suggestive question or a suggestive or coercive situation?

25 A. Well, it's -- it certainly has a -- and it depends on

1 voice, tenor and so forth, which we can't really identify, but
2 she gives a specific response. And then they say, "Look
3 carefully. Is he the one?"

4 She responds, "No, his nose is longer." And then, "He
5 has a long nose."

6 And then, "Do you know who that is?" "Have you ever
7 seen this man?" And then, "Have you seen this man?" "Do you
8 know this man?" "Don't forget to look closely."

9 There is obviously a pressure that she should identify
10 this individual and she says "No." And then the interviewer:
11 "No, keep in mind people may change a little bit." And then
12 down at the end, "Daughter, take time, look carefully to see if
13 this is the man. Does he look familiar without the mustache?"

14 And so this whole part of this interview, it appears
15 to be to get her to say yes to these questions, although she has
16 clearly said no.

17 THE COURT: It's about time for a break, Mr. Brown,
18 unless the next one is going to be short.

19 MR. BROWN: It might be longer than five or ten
20 minutes.

21 THE COURT: Then let's take our break.

22 Ladies and gentlemen, don't talk about the case or
23 form or express any opinions about the case until it's finally
24 submitted to you. We will take our 15 minute break.

25 (Recess taken)

(Jury In)

THE COURT: All right. Everyone is present.

Dr. Maloney, you are still under oath.

Mr. Brown, you may continue.

MR. BROWN: Thank you very much, Your Honor.

Q. Dr. Maloney, before the break you had read the remainder of the excerpt that have marked as Defense Exhibit 172. I'd like to play out the remainder of that. I would ask you if you could please take a look at the video and see if there is anything else that comes through on the video that is not captured in the transcript or -- in terms of the issue of suggestibility.

(Whereupon, the video was played for the jury)

BY MR. BROWN:

Q. I'm sorry. Perhaps this isn't on the transcript. But did you hear the individual on the video say the picture we showed yesterday did not have a mustache by the Cambodian -- by the individual sitting next to the woman identified as a Vietnamese interpreter?

A. Yes. I can read that statement here.

Q. Was there anything else about the remainder of this excerpt that gives rise to concern?

A. Well, in terms of the process, the one interpreter leans forward and puts her arm over onto the furniture. I mean, certainly in terms of body gesture is intensive in terms of wanting a response and I think that's how that would be

1 interpreted.

2 Q. I just have one last segment I would like to show you,
3 Doctor. The transcript has been marked for identification as
4 Defense Exhibit 173 for indication. It's the K.S.x excerpt.

5 Your Honor, may these be received into evidence, the
6 excerpts?

7 MS. DONAHUE: No objection.

8 THE COURT: Those will be admitted.

9 (Defendant's Exhibit 173 was received)

10 BY MR. BROWN:

11 Q. The quality of this video isn't quite as good, but
12 Dr. Maloney, does that woman where the mouse is pointing look
13 familiar to you?

14 A. It may be the one from the other interview.

15 THE COURT: Mr. Brown, please -- I assuming you are
16 rising for an objection, Ms. Donahue.

17 MS. DONAHUE: Objection, but we will stipulate that
18 it's Kim Fong, the Vietnamese interpreter.

19 THE COURT: This witness is here to give his expert
20 opinion. The jury can figure out who is doing what in the video
21 that they are watching at the same time as this witness.

22 MR. BROWN: I apologize, Your Honor.

23 THE COURT: That's all right.

24 MR. BROWN: For the record, I am going to counter
25 44:43 on this excerpt -- 44:35. I'm sorry.

1 44:21.

2 (Whereupon, the video was played for the jury)

3 MR. BROWN: Just pausing.

4 Q. In this case there appears to be someone else who is not on
5 the screen, a Cambodian interpreter.

6 Is that fair to say, Dr. Maloney?

7 A. I believe that's who it would be.

8 Q. Is that what you meant when you testified earlier about the
9 video not showing the whole picture, about the atmosphere,
10 because there were people off camera speaking?

11 A. Correct.

12 (Whereupon, the video was played for the jury)

13 THE COURT: Are we meant to be hearing that,
14 Mr. Brown, because I can't hear it.

15 MR. BROWN: I think the audio on this segment is not
16 as good as the others, Your Honor.

17 THE COURT: Okay.

18 MR. BROWN:

19 Q. Dr. Maloney, I apologize. The audio on here is not very
20 good. But if you look at the excerpt right after the
21 handwritten notation that says 45:20, CI asks a question in
22 italics and TC responds, when did VNI -- for Vietnamese
23 interpreter -- has a comment there. What does she say there,
24 Dr. Maloney? And is there anything significant about that?

25 A. If I might go up a bit --

1 Q. Yes.

2 A. -- to 44:35, the interviewer says: "When you said sleep
3 with Michael, what do you mean by that?"

4 Cambodian interpreter: "When said sleep with Michael,
5 what it mean, what want to say?"

6 Vietnamese interpreter then says, "What do you mean by
7 sleeping and having sex with him?" That wasn't mentioned before
8 by her, and that's an insertion.

9 And then the girl says, "Eat him."

10 And they say, "Say it clearly. How do you do it?" "I
11 slept with him." "Don't be shy," exclamation point, so I would
12 guess there was some voice thrown into that. "What else?" "I
13 ate him" and then "Okay, suck Michael's genital" and then the
14 interviewer, "Have oral sex with Michael? Michael ask her put
15 her mouth into his penis."

16 THE COURT: Wait a minute. Is that the interviewer or
17 CI interpreter?

18 THE WITNESS: That's the interpreter, yes.

19 And so then the Vietnamese interpreter -- this is an
20 example we talked about before with the language -- "So you
21 sucked on his cock? Speak frankly. The mister is here to help.
22 Other girls have told the mister the true stories about him."

23 So there is two issues in that the interpreter's
24 response using the more crude term for oral sex and then other
25 girls have told the mister the truth introduce stories about

1 this man, that's an example of what we were talking about

2 cross-germination or contamination. She is saying, listen, we

3 have already heard it from other people.

4 BY MR. BROWN:

5 Q. Anything else about that excerpt, Dr. Maloney, as you

6 continue?

7 A. Well, they go into the amount of time that she was there

8 and so forth. But I -- I think the flow of that is -- is a

9 characterization of some of the things we've been talking about.

10 Q. And going to the end of this segment, I would like to show

11 you an example and see if -- and get your opinion on that,

12 Dr. Maloney.

13 I'm trying to go to 48 -- 48:12.

14 (Whereupon, the video was played for the jury)

15 BY MR. BROWN:

16 Q. I don't know if you caught that. The audio is not very

17 good. But let me back it up again. I am -- I guess I'm

18 starting here at 47:48.

19 (Whereupon, the video was played for the jury)

20 BY MR. BROWN:

21 Q. That segment is TC, the agent, saying in the last -- second

22 to the last line on the transcript, "The time is now 14:47,

23 right?"

24 Did you hear that?

25 A. Yes, I did.

1 Q. On that last segment after the agent left, it appears that
2 the Vietnamese interpreter is speaking with K.S.x and what she
3 said got captured on tape and was transcribed. There was no
4 question pending, right, from the agent?

5 A. That's the way I heard it, yes.

6 Q. It appears she says, "Don't be afraid, don't be shy, tell
7 the mister how you were abused."

8 A. Yes.

9 Q. In your mind, is that problematic for the interpreter to be
10 asking questions when the agent has left the room? Is that
11 suggestive, in your opinion?

12 A. Professional translator or interpreter, when you're doing
13 an interview, should interpret the words directly with no
14 commentary whatsoever. And in this case, there's what appears
15 to be pressure for her to say, "Tell me how you were abused."

16 Q. And finally, with respect to the NTD interview, the first
17 interview that the prosecutor was asking about on
18 cross-examination, if you could -- if you recall that, do you
19 recall -- that interview, do you recall the agent speaking in --
20 I'm sorry.

21 Do you recall a portion where the examiner said
22 something to NTD such as, "Tell uncle. Uncle is here to help
23 you. Please talk to uncle"?

24 Do you recall that portion of the transcript?

25 A. I do recall that.

1 Q. And that was the beginning of the interview of NDT or NTDx;
2 right?

3 A. Yes.

4 Q. In your mind, is there anything problematic with the
5 agent -- is that an example of the kind of suggestive comforting
6 that can contaminate an interview, in your mind?

7 A. And leading. And I was a little perplexed by what "uncle"
8 meant. It seemed to me that it might have been a more generic
9 term than anybody in authority or anybody involved could have
10 been called as they call mister. But it, again, is a situation
11 where the interpreter is overstepping the lines of
12 interpretation or translation.

13 And in some of these cases, there's possibly a whole
14 page going back and forth between the interpreter and the child,
15 and the actual interviewer isn't involved in that process at
16 all.

17 MR. BROWN: Your Honor, may I have one moment?

18 THE COURT: Yes.

19 (Mr. Brown and Mr. Gunn confer off the record)

20 MR. BROWN: Your Honor, I have no further questions.

21 MS. DONAHUE: Recross?

22 RECROSS-EXAMINATION

23 BY MS. DONAHUE:

24 Q. Dr. Maloney, you don't know how "uncle" translates from the
25 Vietnamese, do you?

1 A. No, I don't.

2 Q. You don't know whether "uncle" means the -- what we know it
3 to be, the brother of one's parent or whether it has a much
4 broader and different meaning in Vietnamese, do you?

5 A. I don't, but my thought was it must have a broader use.

6 Q. Based on the context of the interview? Is that what your
7 thought was based on?

8 A. Right.

9 Q. And going back to you have -- you were asked about the
10 interview of K.S.x. that is actually K.S.x. do you still have
11 the full transcript in front of you, the binder with the full
12 transcripts?

13 A. Yes.

14 MS. DONAHUE: Agent, maybe you could get it out of the
15 binder. K.S.x.

16 Q. If you could turn to Page 36?

17 A. Yes.

18 Q. At the top of the page, she was asked a fairly explicit
19 leading question, wasn't she?

20 A. Yes.

21 Q. "Did he ever do anything through your butt? Did he ever
22 have sex through your anus. Did he penetrate your anus with his
23 dick?

24 All three questions were asked, and what did she say?

25 A. She says "No."

1 Q. "No." So she was able to withstand certainly the
2 suggestibility of that question, wasn't she?

3 A. Yes.

4 Q. And with regard to I.T., the first video clip that you were
5 shown, you said there was body pressure and other pressure from
6 the adults to get her to identify the man in the photograph?

7 A. Yes.

8 Q. But she didn't do it, did she?

9 A. No.

10 Q. She said he did not have a moustache and no one in that
11 room changed her mind on that point, did they?

12 A. She said no and seemed pretty certain about it.

13 MS. DONAHUE: I have no further questions.

14 THE COURT: Anything further, Mr. Brown?

15 MR. BROWN: No, thank you.

16 THE COURT: Thank you, sir. You're excused. You can
17 leave all of that there and Agent Phillips will clean it up.

18 Does the Defense have another witness?

19 MR. GUNN: Our next witness would be Dr. Richard
20 Bennett. With the Court's permission, I am going to see if
21 Mr. Brown can change over the computer connection while I step
22 out and get him.

23 THE COURT: You may.

24 Richard Gary Bennett, Defendant's witness, was sworn

25 THE CLERK: Please have a seat. Please state and

1 spell your full name for the record.

2 THE WITNESS: Richard Gary Bennett. B-E-N-N-E-T-T.

3 THE COURT: You may proceed.

4 MR. GUNN: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. GUNN:

7 Q. Dr. Bennett -- and maybe I am signaling it by the way I am
8 addressing you -- what is your profession?

9 A. I am a physician and dermatologist.

10 Q. What kind of practice do you have right now or what is your
11 practice right now?

12 A. My practice is mostly confined to the treatment of skin
13 cancers.

14 Q. And are you working for a hospital or an entity or do you
15 have your own private practice?

16 A. I have my own private practice, as well as I have a
17 part-time/full-time position at UCLA.

18 Q. And what is that part-time/full-time position at UCLA?

19 A. I run a clinic once a month where I treat skin cancers.

20 Q. And do you have any professorships at UCLA and/or any other
21 institutions?

22 A. Yes. I am a clinical professor of dermatology at UCLA as
23 well as being a clinical professor of dermatology at USC.

24 Q. And what do you do as a clinical professor?

25 A. I give lectures to the residents and medical students,

1 teach the residents and the medical students in clinics that we
2 have when I go over there to attend.

3 Q. And I assume you went to medical school?

4 A. Yes.

5 Q. Where did you go to medical school and when did you
6 graduate?

7 A. Case Western Reserve Medical School, Cleveland, Ohio, in
8 1970.

9 Q. And have you been practicing as a physician ever since
10 then?

11 A. Yes.

12 Q. Are you licensed to practice as a physician in the State of
13 California?

14 A. Yes.

15 Q. Do you have any board certifications?

16 A. Yes, I am a board certified dermatologist.

17 Q. Are you what is known as a diplomate of the National Board
18 of Medical Examiners?

19 A. Yes.

20 Q. What exactly is that?

21 A. It's a -- just signifies you have taken an examination
22 following and during medical school.

23 Q. Are you a diplomate of the American Board of Dermatology?

24 A. Yes.

25 Q. What's that?

1 A. That means that you have had training, usually with three
2 years of dermatology and a residency that has been approved by
3 certain governing bodies in this country, as well as having
4 taken an examination given by the American Board of Dermatology.

5 Q. Do you have any what are known as hospital appointments?

6 A. Yes.

7 Q. What hospitals?

8 A. I have a hospital appointment at UCLA, at St. John's
9 hospital, at Santa Monica Hospital, Huntington Hospital in
10 Pasadena and at USC Medical Center.

11 Q. And what does it mean to have a hospital appointment?

12 A. It means that you basically fulfill their criteria. They
13 give you a -- well, they give you a form to fill out which you
14 have to complete and then it goes through various governing
15 bodies at the hospital.

16 Q. And do they have to approve you --

17 A. Yes.

18 Q. -- as qualified to be appointed by their hospital?

19 A. Yes.

20 Q. Are you a member of any medical and professional societies?

21 A. Yes.

22 Q. Can you tell us what some of those are?

23 A. I'm a member of the American Academy of Dermatology, the
24 Los Angeles Metropolitan Dermatologic Society, the American
25 College of Mohs Micrographic Surgery, the American Society for

1 Dermatologic Surgery, the International Society for Dermatology.

2 Q. Several others as well?

3 A. And several others as well.

4 Q. Have you -- by the way, in your capacity -- have you been
5 involved since becoming a physician back in the '70s with
6 training other physicians?

7 A. Yes.

8 Q. And how and in what context is that?

9 A. Well, I was a full-time academic professor at Emory
10 University in Atlanta, Georgia, before coming to UCLA where I
11 was a full-time academic professor there. And I also have a
12 fellowship I run in Mohs Micrographic Surgery which is a special
13 kind of surgery for skin cancer. And I've trained 27 fellows.
14 A fellow spends one year with me.

15 Q. Have you done any training or advising of residents and
16 others who are studying medicine at UCLA and/or USC?

17 A. Well, we -- yes. I mean, I sometimes acted as a mentor or
18 an adviser. We also have had several people from -- several
19 individuals from my office go on and train in medical school
20 that were laboratory technicians or other personnel in my
21 office.

22 Q. Do you know Dr. Noah Craft?

23 A. Yes.

24 Q. How did you first meet him?

25 A. Noah Craft was a resident at UCLA and I met him when I went

1 over there to attend in the clinics.

2 Q. By attend, what does attend mean?

3 A. Well, it means that I would be a supervisor. Basically I
4 go over there and practice one day a month. And then they would
5 assign residents to assist me in the clinic and, you know, I
6 would show the residents what I was doing and we'd also teach
7 them surgery in the clinics.

8 Q. Was he one of the residents who was assigned to you at one
9 time --

10 A. Yes.

11 Q. -- while you were attending or training?

12 A. Yes.

13 Q. Have you written any -- have you written at all in the area
14 of medicine and dermatology?

15 A. Yes.

16 Q. Have you written actual book chapters?

17 A. Yes.

18 Q. How many book chapters have you written?

19 A. Probably six or seven book chapters.

20 Q. Have you published original papers that aren't in actual
21 books but are in medical journals?

22 A. Yes.

23 Q. How many of those would you say you have published?

24 A. About 65.

25 MR. GUNN: Your Honor, I would offer Dr. Bennett

1 as an expert in the medical field of dermatology.

2 MR. LULEJIAN: No objection, Your Honor.

3 THE COURT: All right. I find he is an expert in that
4 field.

5 MR. GUNN: Thank you, Your Honor.

6 Q. Dr. Bennett, have you been hired by the Federal Public
7 Defender's office to consult with us in this case and testify,
8 if necessary, regarding dermatology issues?

9 A. Yes.

10 Q. In the process of consulting for us, have you reviewed a
11 PowerPoint presentation prepared by Dr. Craft?

12 A. Yes.

13 Q. Did you actually review two -- or at least part of two
14 PowerPoint presentations?

15 A. Yes.

16 Q. In one of them were some photos redacted because they
17 showed child pornography?

18 A. Yes.

19 Q. Before we started discussion of those specific PowerPoint
20 presentations, I would like to ask you if you have heard
21 something called teledermatology?

22 A. Yes.

23 Q. What is teledermatology?

24 A. Teledermatology is a fairly new concept which is an
25 outgrowth of the Internet whereby individuals, frequently

1 physicians, will take photographs of skin lesions and pass them
2 over the Internet to other physicians who are not as familiar
3 with the skin lesions that are being photographed, in the hope
4 that the individuals that are receiving them would be able to
5 diagnose and offer some form of treatment for the lesions that
6 are being photographed.

7 Q. Now, you used the term skin lesions which I think may be a
8 little sort of too medical for some people.

9 What are skin lesions?

10 A. Well, skin lesions are growths on the skin or it could be
11 rashes on the skin also.

12 Q. And would that, for example, include things that we
13 commonly call moles?

14 A. Yes.

15 Q. Include other things as well?

16 A. Yes.

17 Q. To what -- going back to teledermatology, to what extent is
18 teledermatology generally accepted among dermatologists and to
19 what extent is there disagreement about its reliability and
20 usefulness?

21 A. I don't think it's widely accepted in the field of
22 dermatology for a number of reasons, and, in fact, there have
23 been some instances where it's been tried and disbanded just
24 because dermatologists look at things in more dimensions than
25 what would be looked at with a photograph over the Internet.

1 Q. Are there also issues of photograph quality versus actually
2 looking at something in person?

3 A. Yes.

4 Q. All right.

5 Could you explain why dermatologists don't generally
6 accept teledermatology as reliable and useful, in your opinion?

7 A. Well, I think that one issue is the dermatologists
8 frequently have to feel the lesions on the skin to make a
9 diagnosis, and that is very difficult to do with the photograph.

10 Another reason why is frequently diagnoses are made by
11 virtue of asking the patient several questions to -- that would
12 indicate, you know, how long the patient has had the lesion,
13 what treatments have been given, all those sorts of things,
14 which is very difficult just looking at one snapshot in time.
15 So it always makes me uneasy just to see a photograph of a
16 lesion to make an adequate diagnosis.

17 Q. And how do issues of photograph quality versus looking at
18 it with your own eye work into that?

19 A. Well, I think the photographic quality is variable,
20 depending on several factors. The camera that's used, the
21 ability of your computer to pass -- pass information over the
22 Internet. If you have lower quality images, it's easier to pass
23 over the Internet than higher quality images, and that also is a
24 limitation.

25 Q. Are there major medical centers in the Los Angeles area

1 that don't have teledermatology practices?

2 A. I don't know of any teledermatology set up at UCLA in
3 Westwood. Nor do I know of any teledermatology set up at USC.

4 Q. Have you heard of hospitals that have started
5 teledermatology practices and then canceled them or dropped
6 them?

7 A. Yes.

8 Q. Any specific examples that come to your mind?

9 A. Well, I have a friend at the Boston Children's Hospital who
10 told me that they had tried to do this with pediatric cases and
11 sort of disbanded it just because it was -- they just weren't
12 confident in their ability to diagnose over the Internet.

13 Q. Now I would like to take you to Dr. Craft's PowerPoint
14 presentations and be more specific to this case.

15 Did those include sets of photos in which Dr. Craft or
16 a set of photos in which Dr. Craft highlighted with black
17 circles what he believed were moles in several photos of thighs
18 or knees?

19 A. Yes.

20 Q. Your Honor, could --

21 Did you look for other markings that in your opinion
22 looked just as much like moles or other permanent skin lesions?

23 A. Yes.

24 Q. Did you prepare some PowerPoint -- a PowerPoint
25 presentation with some alternative slides to show what you found

1 that would help you explain your opinions?

2 A. Yes.

3 MR. GUNN: Your Honor, could I have initially have
4 some hard copies marked as Defense exhibits?

5 THE COURT: Sure.

6 MR. GUNN: If I could approach.

7 These would be Defense exhibits 282 through 284. A
8 set of originals with exhibit tags and a copy for the Court.

9 THE COURT: Any objection to these, Mr. Lulejian?

10 MR. LULEJIAN: None, Your Honor.

11 THE COURT: All right. Those will be admitted.

12 (Defendant's Exhibits 282 through 284 were received)

13 MR. GUNN: Dr. Bennett, would you look -- I'm sorry,
14 Your Honor just admitted them? Did I hear that?

15 THE COURT: Yes.

16 BY MR. GUNN:

17 Q. Would you look at Defense Exhibits 282, 283, and 284,
18 Dr. Bennett, and tell us if those are sort of the final
19 alternative slides you prepared with all of your additions? Or
20 hard copies thereof?

21 A. Yes.

22 Q. And did you also send the actual PowerPoint presentation to
23 me to put on my computer?

24 A. Yes.

25 MR. GUNN: Your Honor, what I would like to do now is

1 -- assuming the technology works -- and go to the PowerPoint
2 presentation on my computer --

3 THE COURT: We're crossing our fingers for you.

4 MR. GUNN: Thank you, Your Honor.

5 It's magic, Your Honor.

6 THE COURT: Okay.

7 BY MR. GUNN:

8 Q. Dr. Bennett, I would like you to compare the screen. Is
9 this one of the slides you sent me in your PowerPoint
10 presentation?

11 A. Yes.

12 Q. And it has -- are those black circles the circles that were
13 on what Dr. Craft prepared?

14 A. Yes.

15 Q. And does this actually have added in to your PowerPoint
16 presentation two labels that say what Government exhibits the
17 photographs are from?

18 A. No.

19 Q. On the screen.

20 A. On the screen. Oh, yes.

21 Q. Otherwise it's the same as the hard copy you have in front
22 of you?

23 A. Yes.

24 Q. Now, these are the black circles that you understood
25 Dr. Craft to have identified as moles or permanent skin lesions?

1 A. Yes.

2 THE COURT: For the record, Mr. Gunn, you're referring
3 to your Exhibit 283 now?

4 MR. GUNN: Yes, Your Honor.

5 Q. And do I have the exhibit No. Correct, Dr. Bennett? This
6 matches with your Exhibit 283? If you look at the exhibit tag
7 on the back?

8 A. Yes.

9 Q. All right.

10 And did you circle -- did you look at these
11 photographs and find some additional marks that you thought were
12 equally likely to be moles or permanent skin lesions?

13 A. Yes.

14 MR. GUNN: Your Honor, if I could?

15 THE COURT: Yes.

16 BY MR. GUNN:

17 Q. Are those the marks that you found on the picture on the
18 left, the blue circles?

19 A. Yes.

20 Q. And are the blue circles in the picture on the right the
21 marks you found in that picture that you believed were equally
22 likely to be moles or skin lesions?

23 A. Yes.

24 Q. Would you explain why the marks that you identified in blue
25 are in your opinion just as likely to be moles or skin lesions

1 as the marks circled in black?

2 A. Well, the moles that were circled in black, as you can see,
3 are small and lightly pigmented; that is, they're not dark.
4 And, therefore, it's very difficult to make a diagnosis with a
5 photograph as to whether or not these might be moles or not.

6 The other lesions that I circled were also lesions
7 that were small and dark as well, although slightly less
8 pigmented; that is, slightly less dark, but moles tend to vary
9 in their color in terms of their darkness. We all know that
10 very black moles can be a sign of melanoma, but most moles on
11 our body have various shades of pigmentation, ranging all the
12 way from no pigmentation where they are just absolutely white,
13 to very dark. And so it's very difficult just based on size and
14 the darkness of these lesions to make a diagnosis of moles or
15 not moles.

16 Q. In your expert medical opinion, are the marks that you
17 circled in blue on this exhibit just as likely to be moles or
18 permanent skin lesions as the marks that are circled in black?

19 A. Yes.

20 Q. I would like to move to the next slide.

21 Is the slide that appears on the screen now identical
22 to what you have in front of you as Government Exhibit 28 -- I'm
23 sorry -- Defense Exhibit 284, except it doesn't have the blue
24 circles that you added yet?

25 A. Actually, the one I have has blue circles but the one on

1 the screen does not.

2 Q. All right, then, I misspoke. That's what I meant.

3 And this is as you got it from Dr. Craft's PowerPoint
4 presentation?

5 A. Yes.

6 Q. And you understood that what was circled in black were what
7 he opined were moles or other permanent skin lesions?

8 A. Yes.

9 Q. And did you then look at it to identify others that you
10 believed might be moles or permanent skin lesions?

11 A. Yes.

12 Q. And did you circle those in blue like on the previous
13 slide?

14 A. Yes.

15 Q. Going to the next slide, is that a mark that you identified
16 in the photograph on the left as?

17 A. Yes, but I wouldn't identify that as possibly a mole. It's
18 more likely it's some sort of excoriation.

19 Q. All right.

20 And going to the next slide, are the marks on the
21 right that you circled in blue other marks you identified?

22 A. Yes.

23 Q. And do you believe those -- well, do you believe those are
24 just as likely to be moles or other permanent skin lesions as
25 the marks circled in black?

1 A. Yes.

2 Q. Would you explain why.

3 A. They're very similar in appearance.

4 Q. And is there anything else about them?

5 A. No.

6 Q. And does the slide that's on the screen now match Defense
7 Exhibit 284 in its entirety?

8 A. Yes.

9 Q. Except for the addition of Government exhibit numbers?

10 A. Yes.

11 Q. All right. I would like to now go to the next slide.

12 Does this PowerPoint slide that is on the screen now
13 match what you have as Defense Exhibit 282, except it does not
14 have yet the blue circles you added?

15 A. Yes.

16 Q. And are these marks you understood Dr. Craft to have
17 identified as moles or other permanent skin lesions?

18 A. Yes.

19 Q. Did you then look for other marks that you thought would be
20 moles or other permanent skin lesions on this?

21 A. Yes.

22 Q. Does this slide show marks of that sort that you found on
23 the upper picture?

24 A. Yes.

25 Q. And does this show a mark that you found on the middle

1 picture?

2 A. Yes.

3 Q. And does this show a mark you found on the lower picture?

4 A. Yes.

5 Q. Now, in your opinion, are the marks you circled in blue --
6 and does the screen that's before you now exactly match Defense
7 Exhibit 282, except it has Government exhibit numbers added?

8 A. Yes.

9 Q. Now, in your expert medical opinion, are the marks you
10 circled in blue just as likely to be moles or other permanent
11 skin lesions as the marks that are circled in black?

12 A. Yes.

13 Q. Would you explain why.

14 A. Because they are very similar in appearance. They are
15 lightly pigmented, very small.

16 Q. All right.

17 Now, Your Honor, I would like to move to another
18 subject, and I will take this off the screen.

19 THE COURT: Okay.

20 MR. BROWN: Actually, Your Honor, I may ask the
21 prosecutor at this point to pull up some slides from Dr. Craft's
22 PowerPoint presentation.

23 THE COURT: Did you give him fair warning that you
24 were going to do that?

25 MR. GUNN: Yes, I did, Your Honor.

1 Has the TV not been on, Your Honor?

2 THE COURT: I haven't been looking.

3 MR. GUNN: If the actual -- actually, why don't we
4 just go with the screen, Your Honor, since we had that on the
5 previous --

6 Q. Did the PowerPoint presentations, Dr. Bennett, that
7 Dr. Craft -- that we provided to you through Dr. Craft have one
8 marking on the skin -- well, strike that. Let me step back.

9 Was there a separate set of photographs you looked at
10 that had -- an older photo of Mr. Pepe with a young girl naked
11 and then a more recent photograph of Mr. Pepe that showed his
12 face so it was clear they were Mr. Pepe?

13 A. Yes.

14 Q. And did the Power -- and was that discussed in or part of
15 Dr. Craft's PowerPoint presentation that you reviewed?

16 A. Yes.

17 Q. And did one of the photos in that PowerPoint presentation
18 have a marking on the skin of Mr. Pepe's left inner thigh that
19 Dr. Craft labeled "scar"?

20 A. Yes.

21 MR. GUNN: Your Honor, could I have the prosecutor put
22 up PowerPoint slides -- I believe it will be 21 through 23.

23 THE COURT: Please, Mr. Lulejian.

24 MR. LULEJIAN: Yes, Your Honor.

25 MR. GUNN: If the prosecutor could go through 21, 22,

1 and 23 and stop on 26.

2 Q. Do you recognize those three slides that we just went
3 through that show scar?

4 A. Yes.

5 Q. Did you meet me here at the courthouse last Tuesday and go
6 to a room with me to conduct an examination of Mr. Pepe's inner
7 thighs?

8 A. Yes.

9 Q. To see if you found such a mark and if you agree it was a
10 scar?

11 A. Yes.

12 Q. If I could begin with a general question, what did you find
13 with respect to the condition of the skin of Mr. Pepe's inner
14 thighs generally?

15 A. Well, there were several lesions on the inner thighs, on
16 both inner thighs, that appeared to be resolved areas where
17 there had been previous folliculitis, which is inflammation of
18 the hair follicles, that had resolved.

19 Q. Is that sort of similar to a pimple but it's a result of a
20 hair follicle inflammation?

21 A. Yes.

22 Q. And they can be smaller or bigger, the same way acne
23 pimples can be?

24 A. Yes.

25 Q. Do you have an opinion as to whether that condition you

1 observed is a temporary one-time condition or something more
2 chronic and ongoing?

3 A. It's most likely chronic.

4 Q. And would you explain why you have that opinion?

5 A. Because the condition frequently occurs in individuals that
6 are slightly obese because of skin chafing on the inner thighs,
7 and they sometimes will get infected hair follicles in that
8 area.

9 Q. Moving on to a more specific question, did you look for a
10 scar are in the approximate place that Dr. Craft appeared to be
11 highlighting in his PowerPoint pictures?

12 A. Yes.

13 Q. Did you find something in that area that might have been
14 what Dr. Craft highlighted as a scar in his PowerPoint
15 presentation?

16 A. Yes.

17 Q. Did it look like it did in Dr. Craft's presentation exactly
18 or did it look somewhat different?

19 A. Are you asking me -- it looks like it does on this
20 photograph here?

21 Q. Well, let's go back two slides to a photograph -- would it
22 be easier for you to explain with a blown-up photograph or less
23 blown-up photograph?

24 A. I think this photograph is fine. I mean, there is --

25 Q. All right.

1 A. -- there is a skin lesion or marking on the lower left-hand
2 side of that photograph.

3 Q. In the lower left-hand corner?

4 A. Yes.

5 Q. Okay.

6 Did you find -- did what you find look exactly like
7 that or did it look somewhat different?

8 A. It looked slightly different.

9 Q. In what way?

10 A. It was less pigmented, it was less dark. It was smoother
11 than it probably -- than it appears in this picture. It was
12 less apparent. And it was also smaller.

13 Q. What does that difference in appearance mean to you?

14 A. It means that whatever was there before has probably on its
15 own just sort of shrunken up and resolved.

16 Q. Now, have you seen other slides in Dr. Craft's PowerPoint
17 presentation that show what he calls a, quote, growth, unquote,
18 on Mr. Pepe's left inner thigh?

19 A. Yes.

20 Q. Are those photos that you understand or were told were
21 taken at another time?

22 A. Yes.

23 MR. GUNN: Your Honor, if I could have the prosecutor
24 move back to PowerPoint slides 15 and 16 and I will look over
25 his shoulder, if that's all right.

1 THE COURT: Okay.

2 BY MR. GUNN:

3 Q. Is this one of the slides I have just been referring to
4 that you're recalling?

5 A. Yes.

6 Q. Could the scar you observed when you examined Mr. Pepe last
7 Tuesday be related -- first of all, do you have an opinion about
8 what that growth is?

9 A. Not much.

10 Q. Would you explain why?

11 A. Well, the picture -- the picture quality is not very good.
12 It's very difficult to even make out the color of it. It's sort
13 of reddish, but I can't be totally sure. It has a slightly
14 irregular outline. It's difficult to tell to what degree it's
15 elevated. It could be any number of -- types of growths.

16 Q. What are some of the types of things it could be?

17 A. Well, I mean, it could be a wart. It could be some sort of
18 a skin cancer. It could be some sort of infectious process that
19 may have occurred wherever he was at the time. It could be a
20 fibroma, which is a type of cutaneous scar. There is a long
21 list.

22 Q. Could it be something called a boil? Have you used that
23 term with me before?

24 A. Yes. And it could be something like a boil.

25 Q. Could the scar you observed when you examined Mr. Pepe last

1 Tuesday, could it possibly be related to that growth?

2 A. Possibly.

3 Q. Is it definitely related to that growth, in your opinion?

4 A. Not a hundred percent. I would actually say it's probably
5 related to the growth, not possibly.

6 Q. In your opinion, when you looked the scar or what might be
7 the scar, was there anything about the way it looked that
8 appeared to be the result of some surgical or other deliberate
9 removal of an earlier growth like this?

10 A. Not that I could tell.

11 Q. Would you explain why?

12 A. Well, there was no -- no evidence of any suture marks,
13 there was no evidence of any linear incision that might have
14 been done. The -- what I found was something that was so small
15 and miniscule that it -- you know, it's hard -- hard to believe
16 that somebody would have done something surgically there. It
17 was more likely just the result of the lesion just naturally
18 resolving on its own.

19 Q. You talked about someone doing something surgically. What
20 about some lay person on their own doing something to it? Was
21 there anything about it that looked consistent with that?

22 A. No.

23 Q. Would you explain why.

24 A. Well, if some lay person had done something to the area,
25 with a growth this size I would expect more of a scar to have

1 been present there. And . . .

2 Q. Now, going back to the photo of -- the earlier photo where
3 it shows this thing that Dr. Craft called a growth, how and why
4 would a growth like this disappear or resolve on its own?

5 A. Well, it's very common for -- if this was a result of a
6 folliculitis, which is like a boil like you mentioned, it's very
7 common for those lesions to come and go in this area, and it
8 could have well resolved on its own.

9 Q. That leads to my next question, I guess. Could such a
10 growth have a pattern of disappearing and then coming back and
11 then disappearing and then coming back again?

12 A. Yes. It's very possible.

13 Q. Would you explain how and why that is.

14 A. Well, once you have a chronic infection of a hair follicle,
15 you can have the -- have the lesion discharge pus, for instance,
16 and then it seals over, but there is still a few bacteria left
17 in and then it might regrow again.

18 Q. And then it could disappear again?

19 A. Yes.

20 MR. GUNN: No further questions, Your Honor.

21 THE COURT: Cross-examination?

22 MR. LULEJIAN: Yes, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. LULEJIAN:

25 Q. I guess it's still morning. Good morning, Doctor.

1 A. Good morning.

2 Q. Doctor, you testified a few minutes ago about your
3 experience as a dermatologist.

4 A. Yes.

5 Q. And it seems you have had a very vast experience and a vast
6 career in that field.

7 A. Yes.

8 Q. And in fact, it sounds like most of the work you're doing
9 right now is in the very specialized area of dermatology
10 relating to skin cancer; is that fair?

11 A. Yes.

12 Q. I think you called it M-O-H-S, was it Mohs?

13 A. Yes.

14 Q. So it's Mohs and -- it's Mohs.

15 And what is Mohs?

16 A. Mohs is a man's name that was -- was the inventor of a type
17 of surgery that's used to remove skin cancers. And that's
18 mainly what we use to remove more serious skin cancers in this
19 day and age.

20 Q. And I understand when you remove this type of cancer, it's
21 done with a microscope. You have to be very careful about how
22 you do it; is that right?

23 A. Some -- it's removed with a scalpel blade, but then we map
24 out what we've removed, and we have our own lab, and we gross
25 the tissue, that is, cut it apart and look at it under a

1 microscope to make sure everything is looked at, so that all the
2 edges are looked at.

3 Q. And you have to have specialized training to be able to do
4 this kind of work?

5 A. Yes.

6 Q. About how long does it take to become trained to be able to
7 do this kind of surgery?

8 A. Currently one year.

9 Q. I think you said you had 37 students that have gone through
10 this?

11 A. Twenty-seven.

12 Q. Twenty-seven.

13 A. Yeah.

14 Q. Now, Doctor, when you do this kind of surgery, you examine
15 the patient ahead of time; right?

16 A. Yes.

17 Q. In fact, a biopsy is common before you even consider doing
18 this type of surgery?

19 A. Yes.

20 Q. So by the time a patient with this type of cancer comes to
21 you, a number of tests have been done?

22 A. Yes.

23 Q. A number of doctors have seen this person?

24 A. Generally.

25 Q. So when you get it -- when you get this patient, you have

1 got biopsy results, you have got examination results, you have
2 photographs as well?

3 A. Sometimes.

4 Q. But before you do the surgery, you examine the patient
5 personally; right?

6 A. Yes.

7 Q. In fact, I think in the field it's called the gold
8 standard, for a dermatologist to examine a patient?

9 A. Yes.

10 Q. Because that's really the only way you can come close to
11 figuring out what something is?

12 A. That's right.

13 Q. And I understand that you can't actually know what
14 something is unless you do a biopsy of it and analyze the cells?

15 A. And even then you may not be sure.

16 Q. So there is some doubt in this, but you can tell there is
17 some type of growth there?

18 A. Yes.

19 Q. Now, you testified that you are on the faculty of UCLA and
20 I think USC?

21 A. Yes.

22 Q. How does that play out around football season?

23 A. Well, I --

24 MR. GUNN: Objection, Your Honor.

25 THE COURT: That was a rhetorical question and

1 Mr. Lulejian will now ask another one.

2 MR. LULEJIAN: I'm sorry. I will try to come up with
3 a non-rhetorical question, Your Honor.

4 MR. GUNN: He went to Chase Western, Your Honor.

5 MR. LULEJIAN: Mr. Gunn has got me there.

6 THE COURT: And I'm not interested in football so you
7 need to move on.

8 MR. LULEJIAN: Yes, Your Honor.

9 Q. Doctor, when you are teaching at USC and UCLA, do you teach
10 surgery?

11 A. Yes.

12 Q. So are you focused on this Mohs surgery or just general
13 dermatological surgery?

14 A. Actually, I'm focused on Mohs Micrographic Surgery, but we
15 also teach dermatological surgery as well.

16 Q. In fact, when Dr. Craft was your student, he took a
17 surgical class from you; isn't that right?

18 A. I'm sure he took several.

19 Q. Now, when you teach surgery, you don't teach students how
20 to look at photographs and make diagnoses, do you?

21 A. There's some of that. There is some of that.

22 Q. When you say "some of that" what do you mean?

23 A. Well, when I give lectures to the residents and the medical
24 students, we show photographs of lesions and go over with them
25 not only the photograph but also the pathology of the lesion and

1 what was done and so there is some of that goes on during the
2 teaching process.

3 Q. So there is some reliability in a photograph of a lesion?

4 A. Yes.

5 Q. And in fact, you use that to teach students?

6 A. Yes.

7 Q. And in many cases, you actually analyze or examine the
8 lesion that's up on the screen?

9 A. Yes.

10 Q. But for purposes of teaching the students how to do
11 surgery, teaching them to take photographs for their practice
12 isn't part of your curriculum, is it?

13 A. Well, it is with the fellows that I train but not with the
14 residents. In other words, the fellows are a little bit more
15 specialized than with the residents.

16 Q. And you teach them how to take specific photographs of
17 these growths?

18 A. Yes.

19 Q. And the certain criteria that you teach them?

20 A. Yes.

21 Q. You teach them they have to have high quality photographs?

22 A. Yes.

23 Q. You teach them about lighting conditions?

24 A. Not so much lighting conditions. That's pretty much taken
25 care of.

1 Q. Do you teach them about camera angles?

2 A. Yes.

3 Q. Do you teach them the importance of taking multiple
4 photographs of the same thing to ensure that you can analyze it
5 at a later date?

6 A. Sometimes, yes.

7 Q. And those things are important because if you need to meet
8 with a colleague who doesn't have the ability to see the
9 photograph, you need to have enough that they can get a sense of
10 what is there?

11 A. Yes.

12 Q. Now, I notice that you give a series of lectures in your
13 resume. And most of those appear to be related to surgery and
14 some work in skin flaps; is that correct?

15 A. Yes.

16 Q. You don't give any lectures in teledermatology?

17 A. No.

18 Q. You don't give any lectures in the use of photography for
19 the purposes of diagnosis of skin lesions?

20 A. I think I gave one once.

21 Q. How long ago was that?

22 A. Oh, probably six years ago.

23 Q. Technology has advanced a little bit since then, huh?

24 A. Yes.

25 Q. Now, you have given a -- you have written a number of

1 articles and books and very impressive number, I might say, and
2 most of those were about Mohs surgery; right?

3 A. Probably the majority, yes.

4 Q. And cancer surgery?

5 A. Yes.

6 Q. Things related to skin flaps?

7 A. Yes.

8 Q. Items related to, I guess, plastic surgery?

9 A. Yes.

10 Q. None of those had to deal with teledermatology, did they?

11 A. No.

12 Q. And none of them had to do with the use of photographs for
13 the purposes of diagnosing or examining skin lesions, did they?

14 A. No.

15 Q. Now, most of your practice is focused on surgery, and it
16 doesn't depend on photography; is that right?

17 That's a bad question. Let me rephrase it.

18 Most of your practice in surgery does not depend on
19 teledermatology?

20 A. No, although I occasionally get sent photographs over the
21 Internet by physicians on how do I -- with the question how do I
22 repair this wound, but generally not how to diagnose something.

23 Q. When you get one of those pictures, do you just send it
24 back to them and say this is unreliable; I can't do anything
25 with it?

1 A. I try my best.

2 Q. So --

3 A. -- but it's -- there is some unreliability in the
4 photographs I get, yes.

5 Q. But as a trained dermatologist, there are certain things
6 you can identify in those photographs that allow you to at least
7 either give some indication of what it is or give some advice to
8 another physician?

9 A. Yes.

10 Q. So you can actually assist another physician by looking at
11 a photograph that he or she sends you?

12 A. To some degree, yes.

13 Q. And if there was no reliability in it, you wouldn't
14 recommend anything to that person, would you?

15 A. Well, I just don't say I can't recommend anything, because
16 basically they're asking for my help. But, you know, usually it
17 comes down to you can do it this way, you can do it that way,
18 you know, any number of ways. And so I just offer them a
19 smorgasbord because when you are actually in the operative
20 situation of repairing a wound, if they are going to ask me how
21 to repair something, things can change during the surgery, so
22 it's very, very difficult to offer them anything that's set in
23 stone.

24 Q. But you can give them some substantive help based on what
25 you see?

1 A. Yes.

2 Q. And you're able to make that assessment based on your
3 training as a dermatologist?

4 A. Yes.

5 Q. And if it's in the area of, say, Mohs surgery it's going to
6 be on the training that you have not only as you would have had
7 as a fellow but as a professor in that area?

8 A. Yes.

9 Q. So there is something that one can do in the field of
10 teledermatology with photographs?

11 A. Yes.

12 Q. And in fact, it's not infrequent that you get these
13 photographs from other -- other doctors?

14 A. Yes.

15 Q. So other doctors that are not specialized in Mohs surgery
16 may contact you with photographs to seek an expert's help like
17 yourself?

18 A. Yeah, it's usually people that are specialized in Mohs
19 surgery but it doesn't much matter.

20 Q. And those people that are specialized in it know the types
21 of quality of photographs that you need?

22 A. Well, I'm not sure about that but . . .

23 Q. Have you ever been able to offer suggestions on poor
24 quality photographs?

25 A. Yes.

1 Q. So while there is some requirement that you have a good
2 quality photograph, if a photograph isn't perfect, you still can
3 give some advice?

4 A. Yes.

5 Q. You still can make some determination of what is in that
6 photograph?

7 A. Yes.

8 Q. So there is some value to teledermatology?

9 A. There is some.

10 Q. And there is some reliability in it because you're basing
11 your opinion and your reputations as a dermatologist on it,
12 aren't you?

13 A. Yes, there is some.

14 Q. Now, Doctor, you had an opportunity to take a look at a
15 PowerPoint presentation that your colleague Dr. Craft put
16 together; is that right?

17 A. Yes.

18 Q. And you went through and you made some identifications of
19 lesions or nevi -- let's use the word lesions -- lesions in
20 those photographs?

21 A. Yes.

22 Q. Now, did you look at any other photographs other than the
23 ones inside the PowerPoint?

24 A. I believe -- I'm not sure, actually.

25 Q. For example, let's focus on Mr. Pepe's left knee. There

1 was, I believe, one or two photographs in that PowerPoint
2 presentation.

3 Do you remember that?

4 A. Yes.

5 MR. GUNN: Your Honor, there were two PowerPoint
6 presentations involved. If Mr. Lulejian could be more specific.

7 BY MR. LULEJIAN:

8 Q. I think both the presentations had photographs of
9 Mr. Pepe's left knee.

10 A. Yes.

11 Q. But it was only from one angle; is that right?

12 A. I believe so.

13 Q. Okay.

14 Were you aware that Dr. Craft took over 100
15 photographs of Mr. Pepe?

16 A. Yes.

17 Q. So did you look at those photographs?

18 A. Not all 100.

19 Q. Did you look at the eight different angles that Dr. Craft
20 took of Mr. Pepe's left knee?

21 A. No.

22 Q. In identifying the nevi or the lesions, did you look at
23 those photographs to make a determination of what you were
24 circling really was there or was maybe a trick of light?

25 A. No.

1 Q. And when you say that you looked at the photographs, you
2 just circled things that just might be a lesion?

3 A. Yes.

4 Q. And you said because you couldn't tell?

5 A. Well, they were no more likely to be lesions than what was
6 already circled.

7 Q. When you examined Mr. Pepe, did you take the photographs
8 that Dr. Craft took on which he identified the moles?

9 A. No.

10 Q. You didn't bother comparing those photographs and the
11 things he circled to determine whether or not you could
12 determine -- see whether they were a mole or just a passing
13 mark?

14 MR. GUNN: Objection. Argumentative, Your Honor.

15 THE COURT: Overruled.

16 THE WITNESS: I wasn't asked to do that.

17 BY MR. LULEJIAN:

18 Q. You were only asked to take a look at the left inner thigh?

19 A. Yes.

20 Q. But you were asked to make an opinion about a number of
21 other photographs and -- number of other photographs; is that
22 correct?

23 A. The -- yes. Basically the photographs in Dr. Craft's
24 presentation.

25 Q. But a number of the photographs in Dr. Craft's presentation

1 were supported by his examination of Mr. Pepe.

2 MR. GUNN: Objection. Argumentative. No personal
3 knowledge of this witness about what Dr. Craft was supported by.

4 MR. LULEJIAN: I will lay some foundation, Your Honor.

5 THE COURT: Thank you.

6 BY MR. LULEJIAN:

7 Q. Did you read Dr. Craft's report?

8 A. Not in its entirety.

9 Q. Did you see in Dr. Craft's report that he said he did a
10 physical examination of the defendant?

11 A. Yes.

12 Q. And the -- but when you went to do the examination, you
13 didn't examine Mr. Pepe all over his body, did you?

14 A. No.

15 Q. So when you read Dr. Craft's report, did you see that
16 Dr. Craft based his choice of lesions or nevi not only on the
17 photographs that he took but also on his physical examination?

18 MR. GUNN: Objection. Mis --

19 THE COURT: He is asking him a question.

20 THE WITNESS: Why don't you restate the question?

21 BY MR. LULEJIAN:

22 Q. Certainly.

23 In Dr. Craft's report, he states that he based his
24 decision on both the photographs he took and his personal
25 examination of the defendant; isn't that right?

1 A. Yes.

2 Q. But when you went, you didn't look at other parts of his
3 body?

4 A. Not specifically.

5 Q. You didn't bother to look to see whether the things that
6 Dr. Craft circled in black actually were relatively permanent?

7 A. No, I didn't look carefully at that.

8 Q. You didn't look to see whether there were maybe, in fact,
9 hair follicles that are temporary?

10 A. Well, I did notice there were a number of lesions, when I
11 looked at Mr. Pepe, that weren't on the photographs.
12 Specifically the lesions I mentioned earlier that were on the
13 inner thighs.

14 Q. Let me put up some of the photographs and let's talk about
15 some of the specific things that Dr. Craft identified.

16 Perhaps counsel could put up the first photograph that
17 you put up of Exhibit No -- -

18 MR. GUNN: Does counsel want just the black circles or
19 all --

20 MR. LULEJIAN: I tell you what, let me put mine up and
21 then we will go over to his.

22 Q. Doctor, I am going to show you a close up of Government
23 Exhibit 2108. Doctor, in this photograph there are a number of
24 black circles.

25 Do you see those?

1 A. Yes.

2 Q. And those are the circles that highlight the lesions that
3 Dr. Craft determined would be useful in his assessment?

4 A. Yes.

5 MR. GUNN: Your Honor, could we have the PowerPoint
6 slide on this so that we can look --

7 THE COURT: Do you want the number?

8 MR. GUNN: There should be a PowerPoint slide number.

9 MR. LULEJIAN: No. 34, Your Honor.

10 MR. GUNN: 34?

11 MR. LULEJIAN: 34.

12 Q. And it's a little hard to see with the light, but there
13 appears to be one, two, three, four, five -- six circles that
14 Dr. Craft made?

15 A. That's correct.

16 Q. In each of those circles, he has highlighted something that
17 he believes is a mole.

18 Do you see that?

19 A. Okay. Yes.

20 Q. Now, you haven't ruled out the -- in your analysis, you
21 haven't ruled out those six circles, have you?

22 A. Ruled out?

23 Q. You didn't dismiss those as not being present, did you?

24 A. No.

25 Q. So you would agree with the fact that these marks would be

1 on defendant's leg?

2 A. Yes.

3 Q. And you just said that there are other marks that go along
4 with it?

5 A. There are -- there were other lesions that I saw on the
6 inner thighs.

7 Q. All right.

8 We will go through some of those in a second, but for
9 purposes of the assessment, there is no dispute that Dr. Craft
10 hasn't identified six moles on the defendant's left thigh?

11 A. Well, I don't know if those are actually moles. They could
12 be suborrheic keratosis, there could be other growths on there
13 like warts. I can't say those are actually moles.

14 Q. So you can't say that because you didn't bother analyzing
15 Mr. Pepe, did you?

16 MR. GUNN: Objection, Your Honor. Argumentative.

17 THE COURT: I don't think analyzing Mr. Pepe is the --

18 MR. LULEJIAN: How about examining Mr. Pepe?

19 THE COURT: Overruled.

20 BY MR. LULEJIAN:

21 Q. And even though they may not be moles per se -- I know I am
22 going to mess up the pronunciation of this -- suborr --

23 A. Suborrheic keratosis.

24 Q. Thank you very much, Doctor.

25 Those are relatively permanent items on the skin as

1 well?

2 A. They are much less permanent.

3 Q. They last for several years?

4 A. They can.

5 Q. Did they tell you the time frame in which these pictures
6 were taken?

7 A. Roughly.

8 Q. About two years, isn't it?

9 A. Yes.

10 Q. Now, so the six marks that we -- six marks that we see
11 there, they are relatively permanent lesions or fixtures on
12 Mr. Pepe's left inner thigh?

13 A. Likely, yes.

14 Q. Okay.

15 Now, let's take a look at -- one minute, Your Honor.
16 This is Dr. Craft's slide. I am going to put up the one you put
17 up in its place. I will just use the overhead, Your Honor.

18 THE COURT: Thank you.

19 MR. GUNN: I can do a slide show.

20 THE COURT: Why don't we take the break.

21 Ladies and gentlemen, don't talk about the case or
22 form or express any opinions about the case until it's finally
23 submitted to you. We will take a 15 minute break.

24 (Recess taken)

25 THE COURT: Everyone is present. Doctor, you are

1 still under oath.

2 Mr. Lulejian, you may continue.

3 MR. LULEJIAN: Thank you, Your Honor.

4 Q. Doctor, before the break we talked about the slides of
5 Dr. Craft that you examined; remember?

6 A. Yes.

7 Q. I forgot to ask you a question, though.

8 When you examined Mr. Pepe, you said it was last week,
9 did you take any photographs of his body?

10 A. No.

11 Q. So the slides we're working off are Dr. Craft's photos?

12 A. Yes.

13 Q. And they're just those photographs that are inside the
14 PowerPoint presentation?

15 A. Yes.

16 Q. Okay.

17 Let's take a look at Defense Exhibit No. 2 -- 284.
18 And we will go back to what Dr. Craft did. This is a diagram
19 that you prepared; right?

20 A. Yes.

21 Q. And the left side is the photograph that Dr. Craft took?

22 A. Yes.

23 Q. And the right side is the photograph that was seized from
24 the defendant's computer media?

25 A. Yes.

1 Q. Now, the photograph that you're using from Dr. Craft is
2 actually slide show No. 32. I am going to put that up just for
3 a second.

4 And the only difference between the photograph that
5 you have and the one that Dr. Craft has is that you went ahead
6 and drew in circles for the -- where Dr. Craft identified moles;
7 right?

8 A. I drew in circles where there wasn't an identification of
9 lesions.

10 Q. Well, let's look at yours. The black ones here are where
11 you said Dr. Craft had drawn moles, and the blue ones are where
12 you added marks that you thought should be considered in the
13 analysis?

14 A. Yes.

15 Q. Okay.

16 There is a couple -- there is something unusual about
17 this slide, isn't there, Doctor?

18 A. I don't know.

19 Q. Well --

20 THE COURT: Be a little bit more specific,
21 Mr. Lulejian.

22 BY MR. LULEJIAN:

23 Q. The magnification of the pictures are very different,
24 aren't they?

25 MR. GUNN: Your Honor, I object. May I consult with

1 counsel for a moment?

2 THE COURT: You may.

3 (Mr. Gunn and Mr. Lulejian confer off the record)

4 MR. GUNN: Actually, Your Honor, may I have one
5 moment?

6 (Mr. Gunn and Mr. Lulejian confer off the record)

7 MR. GUNN: I may have a matter to raise with the Court
8 later.

9 THE COURT: Okay.

10 BY MR. LULEJIAN:

11 Q. Regardless of the magnification, Doctor, what we have tried
12 to do here is identify moles or lesions side-by-side. And you
13 can see in the one on the left, the picture that Dr. Craft took,
14 there are six -- there are six circles around moles?

15 A. Yes.

16 Q. And did you draw those circles in or did Dr. Craft draw
17 them in?

18 A. The black circles.

19 Q. The black circles.

20 A. Dr. Craft drew those.

21 Q. The blue one on the left is the one that you drew in?

22 A. Yes.

23 Q. And the one on the right, the black circles are the ones
24 that Dr. Craft drew in and the blue circles are the ones that
25 you drew in?

1 A. Yes.

2 MR. LULEJIAN: May I have one moment, Your Honor?

3 THE COURT: Yes.

4 BY MR. LULEJIAN:

5 Q. All right. Doctor, I am going to show you now Slide No. 34
6 in Dr. Craft's most recent PowerPoint presentation. And what we
7 are going to do is we are going to have to jump back and
8 forth -- we are going to jump back and forth between this slide
9 and Slide No. 34 because I think it's important that we look at
10 them with the same magnification.

11 MR. GUNN: Objection.

12 THE COURT: Mr. Lulejian, just ask questions.

13 BY MR. LULEJIAN:

14 Q. These -- the black marks are what Dr. Craft identified; is
15 that correct?

16 A. Yes.

17 Q. And there is one on the outside here? The very end?

18 THE COURT: Yes, Mr. Lulejian. We all know that.

19 Move on.

20 BY MR. LULEJIAN:

21 Q. Going to your slide, Doctor, you circled one in blue there.
22 So whether it was in Dr. Craft's original or not, we can agree
23 this is a mole or mark on the left-hand side that we agree to?
24 But there is a number of other --

25 MR. GUNN: Counsel is testifying or making statements

1 as opposed to questions.

2 THE COURT: Well, no. I think he is asking leading
3 questions. So you may do that.

4 MR. LULEJIAN: Thank you, Your Honor.

5 Q. Dr. Bennett, there is a lot of slighter markings that you
6 have circled; is that right?

7 A. Yes.

8 Q. And in fact, I think you testified earlier, if I got this
9 down right, that you looked at the pictures and you said that
10 even though some of them were light, they were lighter in color,
11 you felt that they should be highlighted on the drawing?

12 A. Yes.

13 Q. But you weren't quite sure what they were; is that right?

14 A. Right. Some of them also were the same color and some of
15 them were lighter in color.

16 Q. But the ones that Dr. Craft identified for the most part
17 are pretty much darker than the other ones, aren't they?

18 A. Well, it's hard to say for sure, but some of them are the
19 same color, some of them are darker.

20 Q. But what the goal is is to try to find -- if you are going
21 to be comparing it with a photograph, you want to compare -- you
22 want to take a very conservative approach; is that right?

23 A. I don't know.

24 MR. GUNN: Objection. Vague and ambiguous and may
25 implicate the Court's prior ruling.

1 THE COURT: I have no idea what --

2 MR. LULEJIAN: I'm sorry. Let me try to restate.

3 Q. When looking at the photograph, Doctor, you want to be
4 conservative in what you determine are moles?

5 MR. GUNN: Objection. Vague as to circumstances.

6 THE COURT: Sustained.

7 BY MR. LULEJIAN:

8 Q. Doctor, if you don't get an opportunity to examine the
9 person in this photograph, the one on the left on Defense
10 Exhibit No. 284, you want to be certain that the things that you
11 select as moles are dark enough that you can be fairly certain
12 they are semi-permanent?

13 MR. GUNN: Objection.

14 THE COURT: Mr. Gunn, why don't you take Mr. Lulejian
15 aside and explain to him why you are objecting and why I am
16 sustaining the objection.

17 (Mr. Gunn and Mr. Lulejian confer off the record)

18 BY MR. LULEJIAN:

19 Q. With respect to the photograph on the left, Doctor, you
20 can't be certain what the circles in blue are without examining
21 that person, can you?

22 A. No.

23 Q. So you're just trying to read the picture and make a guess?

24 A. Yes.

25 Q. Let's take a look at Defense Exhibit No. 283 now. The

1 picture on the right is a photograph Dr. Craft took; is that
2 correct?

3 A. Yes.

4 Q. The photograph on the left is one seized out of evidence?

5 A. Yes.

6 Q. And with respect to the photograph on the left, this is
7 Slide No. 39, Dr. Craft identified four marks that he was
8 comfortable saying were lesions?

9 A. Okay.

10 Q. With respect to yours, you identified the same -- the same
11 four were highlighted there but you also identified three other
12 things right in here?

13 A. Yes.

14 Q. Okay.

15 And you also identified some other things on the --
16 you identified -- so you -- let me rephrase that.

17 There are three markings on Dr. Craft's photograph
18 that you felt should be considered as possible lesions?

19 A. That's -- that's the photograph on the right?

20 Q. Yes, sir.

21 A. Yes.

22 Q. Let me zoom in on it. Technology. Let's look at them.

23 Starting from the one on the top, that top circle, the top blue
24 circle is significantly lighter than the one that Dr. Craft
25 circled, isn't it?

1 A. Yes.

2 Q. The one immediately below that, that is also significantly
3 lighter, isn't it?

4 A. Yes.

5 Q. And the -- and the one underneath it with the two -- with
6 the two marks inside that oval?

7 A. Right.

8 Q. They took lighter too?

9 In fact, it looks like a different color?

10 A. To me they look almost the same.

11 Q. Unlike the mark that Dr. Craft circled, the bottom blue one
12 doesn't have clear defined edges, does it?

13 A. I don't think any of them have clearly defined edges.

14 Q. Let's go to the photograph on the right now. Start at the
15 top right-hand corner. Dr. Craft has a black circle around
16 something he considers a lesion that he would say is
17 semi-permanent, according to his report.

18 A. Okay.

19 Q. You have circled three other marks on here. It looks like
20 all three of them are significantly lighter than the one
21 Dr. Craft circled.

22 A. Well, they all look alike to me, including the one
23 Dr. Craft circled.

24 Q. When you looked at this photograph, did you change the
25 contrast at all?

1 A. No.

2 Q. Going now to the right of the photograph, Dr. Craft
3 identified two marks here and you identified one on the far
4 left, near the outer edge of the thigh; is that right?

5 A. Yes.

6 Q. And that one is significantly lighter than the other two,
7 isn't it?

8 A. Maybe slightly lighter. I don't know what you mean by
9 "significantly."

10 Q. Well -- but you can't tell what this is, can you?

11 A. You can't tell what any of them are.

12 Q. Let's go to the middle now. You have highlighted four
13 marks that you believe should be considered in this analysis; is
14 that correct?

15 A. Yes.

16 Q. And the one on the bottom right there, that's pretty large,
17 isn't it?

18 A. Well, again, I don't know what you mean by "large."

19 Q. It fills up the oval you have drawn?

20 A. It fills up the oval.

21 Q. Doesn't have well defined edges?

22 A. No.

23 Q. Doesn't seem to change too much in the contrast of the skin
24 around it?

25 MR. GUNN: Objection. Vague and ambiguous.

1 THE WITNESS: I'm not sure what he means.

2 THE COURT: Sustained.

3 BY MR. LULEJIAN:

4 Q. And the other three marks, the one on the top, the one in
5 the middle and the one on the bottom left-hand corner, you're
6 not sure what those are either?

7 A. No.

8 Q. They're just things you thought, as another dermatologist,
9 should be highlighted?

10 A. I felt they were other skin lesions.

11 Q. I'm sorry?

12 A. I felt that they were other skin lesions.

13 Q. All right.

14 Turning to Defense Exhibit 282. Dr. Bennett, did you
15 understand that the top two photographs were seized from the
16 defendant's computer media?

17 A. Yes.

18 Q. The bottom one was a picture Dr. Craft took?

19 A. Yes.

20 Q. Let's start with the top photograph. There are a number of
21 black marks that Dr. Craft has circled.

22 Do you see all those there?

23 A. Yes.

24 Q. And you would agree that they're marks or pigments on the
25 skin?

1 A. Yes.

2 Q. Now, with respect to the top photograph, you have
3 identified a small mark immediately to the right of the one on
4 the right-hand corner.

5 Do you see that?

6 A. Yes.

7 Q. And you understand that the top picture and the second
8 picture are believed to be the same person?

9 A. Yes.

10 Q. You don't see that mark in the second photograph, do you?

11 A. No.

12 Q. But you highlight it on the first but not the second?

13 A. Yes.

14 Q. It's possible that the reason it's not there is because
15 it's just a trick of the camera; is that right?

16 A. Could be.

17 Q. The fact that it's in one photograph and not the other
18 photograph suggests that maybe that's not the most reliable mark
19 to pick; isn't that right?

20 A. You know, actually I do see it now that you have got it up.
21 It's --

22 Q. Do you want me to zoom in?

23 A. Well, if you look at the central photograph -- yeah, there
24 it is. I didn't circle it, though. You can see it right to the
25 right of that black mark.

1 Q. Here?

2 A. No.

3 Q. I'm not talking about the middle one. I am talking about
4 the one on the right-hand corner.

5 A. Okay. That one.

6 Q. So we're looking at this one. On this one you have the
7 mark that Dr. Craft circled, and then you have drawn a circle
8 over something significantly lighter.

9 Do you see that?

10 A. Yes.

11 Q. But on this one, the middle one, you have the black mark
12 here, and you don't have that circled, do you?

13 A. No.

14 Q. Instead you have a mark that's -- it looks like it's a lot
15 larger and a lot darker underneath it? Do you see that?

16 A. Right.

17 Q. But you don't really see that in the top photograph, do
18 you?

19 A. No. And it can also be the angle.

20 Q. Okay.

21 So what I think we could say is that Dr. Craft
22 identified the top photograph -- two marks that were fairly well
23 defined between the two photographs; right?

24 A. Yes.

25 Q. And in the photograph -- in the circles that you have

1 drawn, there are two very different marks that don't appear in
2 the same photograph; right?

3 A. Well, I'm not sure that the second mark that I drew -- let
4 me see this. I'm not sure the second mark I drew up at the top
5 is not in the central photograph because it could be the angle
6 of the second photograph. You see if the patient -- if the
7 defendant was turned slightly, those two circles might be more
8 spread apart as in the central photograph there.

9 Q. But the problem is if it's the same person and you're
10 trying to identify features that are common on both, you would
11 want to find marks that appear in the same spots in both
12 photographs; right?

13 A. Yes.

14 Q. And if you had one image that -- if you had one mark that
15 was in one but not the other photograph --

16 MR. GUNN: I object. This is verging on the Court's
17 ruling, I believe.

18 THE COURT: I don't think it is, if I'm understanding
19 the question.

20 MR. LULEJIAN: I will try to rephrase it so we are
21 very clear.

22 Q. Dr. Bennett, just so there is no dispute, the top
23 photograph and the second photograph were both seized from
24 defendant's computer media; right?

25 A. Yes.

1 Q. And it's your understanding that the person -- we don't
2 know who that person is -- in the top photograph and the second
3 photograph are the same person?

4 A. Yes.

5 Q. Okay.

6 Now, what I'm asking, Doctor, is that you have
7 identified marks in the top photograph and the second photograph
8 that do not appear in each one.

9 A. Or that I didn't indicate appear in each one.

10 Q. You have got some question about whether or not those marks
11 are there; is that fair to say?

12 A. Well, you know, I just happen to see sitting here that I
13 didn't happen to mark, for instance, on the -- there is one
14 lesion I didn't happen to mark on the central photograph that I
15 marked on the top photograph.

16 Q. Where would that be?

17 A. If you go to the middle photograph, sort of towards the
18 center there is a black circle.

19 Q. This one?

20 A. Yes. If you go to right of that there is a lesion there.
21 I marked that on the top but not the central photograph.

22 Q. Okay. We'll give you that.

23 But with respect to the one on the top right-hand
24 corner and the middle right-hand corner or the middle corner,
25 those marks aren't -- they are not consistent in both

1 photographs, are they?

2 A. They're not.

3 Q. So you probably shouldn't consider that when you pick it
4 because you want to be as conservative as possible?

5 A. Well, I'm not sure because --

6 MR. GUNN: Objection. Argumentative.

7 THE COURT: Sustained.

8 MR. LULEJIAN: Hold on, please.

9 (Mr. Lulejian and Ms. Donahue confer off the record)

10 BY MR. LULEJIAN:

11 Q. Last week when you examined the defendant, were you asked
12 to take photographs?

13 A. No.

14 Q. Now, you talked about a mark on the defendant's inner
15 thigh; remember that?

16 A. Yes.

17 Q. And Dr. Craft in his report said that that mark was a scar?

18 A. Yes.

19 Q. And I think you said earlier that you went last week and
20 examined Mr. Pepe for specifically that mark or that region of
21 his leg?

22 A. Yes.

23 Q. And what did your examination consist of, Doctor?

24 A. My examination consisted of viewing the area and also
25 feeling the area.

1 Q. When you viewed the area, that was a visual observation?

2 A. Yes.

3 Q. Did you touch the area and palpate the area?

4 A. Yes.

5 Q. Approximately how long did you spend doing that?

6 A. A few seconds.

7 Q. And when you looked in that region, you found some sort of
8 a mark that was consistent with what Dr. Craft found; right?

9 A. Yes.

10 Q. But it's just your opinion is different than Dr. Craft's?

11 A. How is my opinion different --

12 Q. Actually it's not. I think you referred to that mark as a
13 scar, turning to your direct testimony?

14 A. I believe so.

15 Q. So both you and Dr. Craft found a scar in the same
16 position?

17 A. Very small scar.

18 Q. But there is a scar there nonetheless?

19 A. Yes.

20 Q. If you look very closely that the scar -- I will pull up
21 Dr. Craft's slide show. This is Slide No. 23. If you look at
22 that scar, in Dr. Craft's photograph you can see a straight line
23 that runs across the top of that scar, don't you?

24 A. I see an indentation.

25 Q. So it's a linear groove?

1 A. Linear groove.

2 Q. It would be right about there?

3 A. Uh-huh.

4 Q. And would you -- now, would a linear groove -- if something
5 was growing there and it fell off naturally, would the linear
6 groove be present?

7 A. I don't quite know how to answer that.

8 Q. Let me rephrase the question.

9 A. A scar is trauma to the skin; is that right?

10 A. Not necessarily. I mean a scar could arise from natural
11 resolution of a lesion that had nothing to do with trauma.

12 Q. But it's going to be left over from something that was
13 present?

14 A. Yes.

15 Q. Okay.

16 A. So if something fell off, you might see a scar?

17 A. Yes.

18 Q. If something was cut off, you might see a scar?

19 A. Yes.

20 Q. If something was picked off, you might see a scar?

21 A. Yes.

22 Q. If something fell off naturally, would you see a linear
23 marking such as in that photograph?

24 A. My interpretation of this slide and that groove that you're
25 talking about is the fact that on either side of that groove

1 there's still some persistence of the lesion there. And it just
2 has resolved on either side -- it has resolved on either side of
3 that groove. It has no other meaning than that.

4 Q. If it was cut off, it wouldn't be clean-cut?

5 A. If it was cut off -- I don't see any evidence that anything
6 was cut off.

7 Q. If it was picked off, you would see some residual material
8 left over there; right?

9 A. I don't know what you would see if it was picked off.

10 Q. You just don't know?

11 A. I just don't know.

12 Q. But we can agree that that is a scar?

13 A. Well, actually I can agree that that is sort of a reddish
14 lesion with irregular borders, and I have no way -- I can't tell
15 you what that is.

16 Q. You testified on direct that it was a scar.

17 A. I testified on direct that I saw a scar when I examined
18 him. I didn't testify on direct that I thought this was a scar.

19 Q. Do you know the location on this photograph of where this
20 close-up is from?

21 A. It's from the inner thigh. I believe on the left.

22 Q. Go back one slide, I believe that's 22.

23 A. Yes.

24 Q. Where the red mark is, is that where what you saw was a
25 scar was?

1 A. Yes.

2 Q. And is that the same location on which the growth that you
3 saw in the picture was?

4 A. Yes.

5 MR. LULEJIAN: I have no further questions,
6 Your Honor.

7 THE COURT: Re-direct?

8 MR. GUNN: Nothing Your Honor.

9 THE COURT: Thank you, sir, you are excused.

10 Does the Defense have another witness?

11 MR. GUNN: Your Honor, we would call Ung Huot. If I
12 could send Mr. Brown out to get him or Mr. Williams, our
13 investigator.

14 THE COURT: Okay.

15 THE CLERK: The interpreter has been previously sworn?

16 THE INTERPRETER: Yes.

17 Ung Huot, Defendant's witness, was sworn

18 THE CLERK: Please have a seat. Please state and
19 spell your full name for the record.

20 THE WITNESS: My name is Ung Huot. Spelled U-N-G,
21 H-U-O-T.

22 THE COURT: You may proceed.

23 MR. GUNN: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. GUNN:

1 Q. Mr. Ung, where do you live?

2 A. Phnom Penh, Cambodia.

3 Q. And are you a Cambodian citizen?

4 A. Yes.

5 Q. Were you born in Cambodia?

6 A. Yes.

7 Q. Have you been a Cambodian citizen all your life?

8 A. Yes.

9 Q. Are there times when you have lived outside Cambodia?

10 A. Yes.

11 Q. And just generally, what sort of time periods were those
12 and where was it?

13 A. From '71 to '92.

14 Q. And where did you live during that period?

15 A. In Melbourne, Australia.

16 Q. Do you speak fairly good English?

17 A. Yes.

18 Q. Why are you using an interpreter here today?

19 A. Because all the witness speak Cambodian and I prefer to
20 speak in Cambodian.

21 Q. How are you employed right now?

22 A. I'm the member of the Senate.

23 Q. Do you also have a personal business or personal employment
24 or company or business?

25 A. No.

1 Q. Do you also have a farm? Do you also have a farm?

2 A. Yes, I do own some farm and land but it's not a business.

3 Q. Okay.

4 And so you're a member of the Cambodian Senate, you
5 said?

6 A. Yes.

7 Q. You said -- when was it you returned to Cambodia? Did you
8 say it was 1992?

9 A. Yes. 1992.

10 Q. How long have you been a member of the Senate?

11 A. Two years.

12 Q. And were you in political life before that in the
13 government at some time before that?

14 A. Yes.

15 Q. And what sort of government positions have you been in?

16 A. In '93 I used to be a Minister of Communication and postal
17 of service. In '94 I'm the Minister of Education. In '95 I'm
18 the Minister of Interior -- Foreign Affairs.

19 THE INTERPRETER: I'm sorry.

20 THE WITNESS: From '97 to '98, I was the Prime
21 Minister of Cambodia.

22 BY MR. GUNN:

23 Q. What about after '98?

24 A. The adviser of the Government. Until I became the Senate.

25 Q. Now, do you know a man named Sander DeMontero?

1 A. Yes.

2 Q. And how do you know him?

3 A. I knew Mr. Sander DeMontero since 1971 when I was in
4 Australia to further my education until the present time.

5 Q. And since returning to Cambodia, have you -- how have you
6 known Mr. DeMontero?

7 A. Well, in 1994 and '95, Mr. DeMontero went to Cambodia to
8 help me in the educational program. And when I became the Prime
9 Minister, he is the helper.

10 Q. So did you have sort of continuing contact with him, at
11 least off and on, from 1994 through recent years?

12 A. Yes.

13 Q. Did there come a time several years back when you had
14 discussions or conversations with Mr. DeMontero about an
15 organization he was involved in that was distributing school
16 supplies?

17 A. I think is in 2005. I heard him usually telling me that he
18 brought some gift and some school supply, distribute it outside
19 the city, the suburb of different province, with the American
20 citizen. And I wasn't paying much attention at the time because
21 I was very busy with my work.

22 And since he's mentioned to me so often, and I decided
23 to go to the different province.

24 And since he told me that he has an organization
25 called Socrates, and I think that if he have that kind of

1 organization, it will be good for me just to bring the gift to
2 the childrens or the school.

3 Q. Let me stop you and take it with some questions. Okay.

4 THE COURT: Wait a minute. Did you finish the
5 translation?

6 THE INTERPRETER: Yes.

7 BY MR. GUNN:

8 Q. Let me follow up on that with a question.

9 You said that he said it was run or organized by an
10 American citizen.

11 A. Yes.

12 Q. And did it -- after hearing him talk about this, did you
13 become interested in participating with this project or this
14 school supply distribution?

15 A. Yes.

16 Q. And so what, if anything, did you say to Mr. DeMontero
17 about that?

18 A. I told him that if you have that kind of program, I'm
19 interested to deliver those gift to the children, unfortunate
20 children living along the border of Cambodia and Thailand.

21 Q. And --

22 A. Remote area.

23 Q. Did you then say you wanted to do that with him and the
24 American or did you say you would just do that on your own?

25 A. I wanted to cooperate with him also, but, you know, it's a

1 very far away. It's about 5 or 600 kilometers. It's very
2 difficult to travel to that remote area.

3 Q. So then did he end up giving you some school supplies to
4 distribute?

5 A. Yes. So it's enough to give it to 500 kids.

6 Q. What did you do with those?

7 A. I brought that and I distribute it to very remote area, a
8 school -- primary school in Banteay Mean Cheay province.

9 Q. Did either he or the American citizen that was in charge
10 insist that the American citizen be able to go with you?

11 A. No.

12 Q. As a result -- or after you did this school supply
13 distribution and had these discussions with Mr. DeMontero, did
14 you develop an interest in meeting the American citizen who was
15 organizing this?

16 A. Yes. Because I feel that if he have an idea of helping,
17 it's good for me to meet with him.

18 Q. Did you know his name at this point?

19 A. Before I met him, I do not know his name until he
20 introduced me when he met with me.

21 Q. And so did you end up having a meeting with him?

22 A. I met with him and also showed him the picture that I took
23 when I distributing the gift, show it to him.

24 Q. Did you find out his name when you met with him?

25 A. Yes.

1 Q. What was that name? Who was it?

2 A. His name Michael Pepe.

3 Q. Now, after that first meeting -- over time about how many
4 times have you met Mr. Pepe?

5 A. Three or four times.

6 Q. Do you think you could recognize him if you looked around
7 the courtroom today?

8 A. Yes.

9 Q. Would you point him out for us.

10 MR. GUNN: Your Honor, identifying Mr. Pepe or do you
11 want more specific?

12 THE COURT: Well, Mr. Pepe has already identified
13 himself, so --

14 MR. GUNN: I don't think it was going to be disputed.

15 Q. Did you have that first meeting with Mr. Pepe and meet him
16 and get to know his name?

17 A. Not only know his name, I learned that he is a professor
18 teaching management in Pannasastra University.

19 Q. Before we get to that, did you talk with him a little bit
20 when you met about his school supply distribution program?

21 A. Yes, I did.

22 Q. But when you learned he was a management professor, did you
23 have some other ideas about what you might like to have him do
24 or do with him?

25 A. At that time when he mentioned that he was the professor of

1 management and I -- that's -- interest me because I have an MBA
2 from Melbourne University, and I would like to discuss further
3 regarding that project.

4 Q. What, if anything, did you suggest to him besides the
5 school supply distribution activity after you found out about
6 this?

7 A. I asked him how does he feel about the Cambodian student,
8 and he explained that is a lot of -- lacking of a lot of other
9 things. And I thought that if he and I join to open a school in
10 order to train those Cambodian student.

11 Q. The type of students you're talking about here, are these
12 small children students or sort of college or graduate students?

13 A. College student.

14 Q. So did you propose to him doing something like that? Just
15 yes or no for now.

16 A. Yes.

17 Q. And did he respond by saying no, I'm just interested in
18 working with children and doing the school supply distribution,
19 or did he express interest in being involved in this sort of
20 other activity?

21 A. He said that he want to join me in order to open that
22 school.

23 Q. Did you then start making some plans and developing some
24 ideas about that?

25 A. Yes. I ask him to go ahead and set up and prepare for

1 that.

2 MR. GUNN: Your Honor, may I approach and have an
3 exhibit marked?

4 THE COURT: You may.

5 MR. GUNN: 391.

6 If I could speak briefly to counsel, Your Honor?

7 THE COURT: Sure.

8 MR. GUNN: If I could approach. I have an original
9 with a paper clip on it and a copy for the report. I haven't,
10 unfortunately, stapled everything together.

11 THE COURT: Thank you.

12 MR. GUNN: I am versed in using a stapler.

13 Q. Mr. Ung, would you look at Defense Exhibit No. 391 and tell
14 us what that is.

15 A. Can you please repeat --

16 Q. Repeat the question?

17 A. Yes.

18 Q. Would you look at the whole group of papers I just handed
19 had you. That have an exhibit tag on the back with the No. 391
20 right there in front of you. If you would, keep them clipped
21 together for now.

22 Do you recognize those papers?

23 A. Yes.

24 Q. What are they? Generally?

25 A. It's correspondence letter between Mr. Pepe and I, we

1 talking about how he prepared this project.

2 MR. GUNN: Your Honor, I offer Defense Exhibit 391
3 into evidence.

4 MS. DONAHUE: Subsequently coming in, it's hearsay.

5 MR. GUNN: I'm not offering it for the truth.

6 THE COURT: What are you offering it for?

7 MR. GUNN: I am offering it to show Mr. Pepe went
8 forward with a willingness and interest to be involved in
9 program. Almost like a verbal offer in a sense. We could
10 address it at a recess.

11 THE COURT: Ladies and gentlemen, this document is not
12 being offered for the truth of the contents of the document and
13 you should not consider it for that. I'm not sure I can
14 articulate what it is being offered for but --

15 MR. GUNN: Just to corroborate that he expressed
16 interest in being involved in this management training program.

17 THE COURT: To the extent you think that's relevant,
18 you may consider it for that purpose only.

19 (Defendant's Exhibit 391 was received)

20 MR. GUNN: Your Honor, if I could approach and have
21 one more exhibit marked?

22 THE COURT: Yes.

23 BY MR. GUNN:

24 Q. Would you also look at Defense Exhibit 390, Mr. Ung.

25 Do you recognize that?

1 A. Yes.

2 Q. What is that?

3 A. It's the letter that the gratitude accepting that he did a
4 good job such as the delivery and providing some gift and stuff.

5 Q. Specifically the school supplies?

6 A. Yes.

7 MR. GUNN: Your Honor, I offer 391 into evidence.

8 MS. DONAHUE: No objection.

9 THE COURT: That will come in.

10 (Defendant's Exhibit 390 was received)

11 MR. GUNN: I have no further questions.

12 THE COURT: That was 390.

13 MR. GUNN: Yes. I meant 390. With the limiting
14 instruction.

15 THE COURT: Correct.

16 Mr. Lulejian.

17 CROSS-EXAMINATION

18 BY MR. LULEJIAN:

19 Q. Good afternoon, sir. You testified that you met the
20 defendant through Sander DeMontero; is that correct?

21 A. Yes.

22 Q. And before Mr. DeMontero introduced the defendant to you,
23 you had never met him before?

24 A. That is correct.

25 Q. You had never spoken with him?

1 A. No.

2 Q. Never had him over at your home for dinner?

3 A. No.

4 Q. Never heard of him?

5 A. No.

6 Q. After Mr. DeMontero introduced you to him and you learned
7 that he was a professor, did you check out his credentials?

8 A. I did not check out his credential but I happen to meet
9 another person, different person. They told me that he is a
10 professor.

11 Q. And during your entire relationship with the defendant, you
12 had understood he was a professor?

13 A. Yes.

14 Q. Did you come to learn the defendant lost his job as a
15 professor at that university?

16 MR. GUNN: Objection. Irrelevant, Your Honor. Move
17 to strike.

18 THE COURT: Overruled.

19 THE WITNESS: I know that he took off from his job at
20 the time that I think I met him, yes.

21 BY MR. LULEJIAN:

22 Q. When you met him and began working with him, the defendant
23 was eager to work with you, wasn't he?

24 A. Yes. Because he did prepare all kind of document and plan.

25 Q. So whatever you proposed to him, he was eager to do?

1 A. Yes.

2 Q. And at that time, you were a senior member of the Funcipec
3 party in Cambodia; isn't that right?

4 A. Yes.

5 Q. And the Funcipec party is one of the two leading political
6 parties in Cambodia; isn't that right?

7 A. Yes.

8 Q. And even though you weren't Prime Minister at the time, you
9 still had considerable influence within the party and the
10 Cambodian government; isn't that right?

11 A. It's not really clear.

12 Q. You're still -- at the time that you met the defendant, you
13 were still involved in Cambodian politics, weren't you?

14 A. I am in charge in the elections in that Funcipec party as
15 the Secretary, Deputy Secretary in charge of election.

16 Q. Were you a Senator at that time?

17 A. No.

18 Q. You have had the defendant over at your home for dinner,
19 haven't you?

20 A. Yes, I did.

21 Q. In fact, you had him over on two occasions?

22 A. I think only once. Yes, but I had breakfast with him twice
23 in correspondence club.

24 Q. In fact, after you dined with him, he was arrested the next
25 day, wasn't he?

MR. GUNN: Objection. Irrelevant, Your Honor.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. LULEJIAN:

Q. You have never been at defendant's house have you?

A. No.

Q. Never been inside the defendant's bedroom?

A. No.

Q. Never seen who lives in defendant's house?

A. I never been to his house.

Q. In fact, you don't really know that much about the defendant, do you?

A. No.

Q. You don't know whether or not he is married?

A. I did not ask. This is personal.

Q. You don't know whether or not he lives with any children?

MR. GUNN: I object. This is irrelevant.

THE COURT: Overruled.

THE WITNESS: No.

BY MR. LULEJIAN:

Q. You don't know what he does behind the locked door of his bedroom, do you?

A. No.

MR. LULEJIAN: No further questions.

THE COURT: Redirect?

1 MR. GUNN: Nothing, Your Honor.

2 THE COURT: Thank you, sir. You're excused.

3 Does the Defense have another witness?

4 MR. GUNN: Your Honor, we would call Khieu San, if
5 Mr. Williams could step out and get him.

6 THE CLERK: Again, we have the assistance of the
7 Cambodian interpreter.

8 Khieu San, Defendant's witness, was sworn

9 THE CLERK: Please state and spell your full name for
10 the record.

11 THE WITNESS: My name is Khieu San, spelled K-H-I-E-U,
12 and my first name San, S-A-N.

13 THE INTERPRETER: Spelled K-H-I-E-U and S-A-N.

14 DIRECT EXAMINATION

15 BY MR. GUNN:

16 Q. Do you speak English or fairly good English?

17 A. Yes. But I am pleased -- as a I am the member of
18 Parliament in Cambodia, I better speak my own language
19 officially.

20 THE COURT: Mr. Khieu, would you like to speak English
21 here or would you like to use the Cambodian interpreter?

22 THE WITNESS: I prefer to speak in Cambodian.

23 THE COURT: Then please wait for the Cambodian
24 interpreter to interpret the lawyer's questions and do not
25 answer in English.

1 THE WITNESS: Okay.

2 THE COURT: Mr. Gunn?

3 MR. GUNN: Yes, Your Honor.

4 Q. Mr. Khieu, are you a Cambodian citizen?

5 A. Yes.

6 Q. One of the difficulties about knowing both languages is you
7 have to try to listen to the Cambodian rather than my English,
8 if you can.

9 A. Okay.

10 Q. Very good. Thank you.

11 Were you born in Cambodia?

12 A. Yes.

13 Q. And have you lived in Cambodia all your life or have you
14 lived other places as well?

15 A. I live abroad quite a few other place.

16 Q. And where have you lived abroad?

17 A. Thailand, Vietnam, Japan, and United States.

18 Q. Where in the United States have you lived?

19 A. Ohio.

20 Q. How are you -- well, did you mention I think just now that
21 you're in the National Assembly?

22 A. Yes.

23 Q. How long have you been in the National Assembly?

24 A. Five years.

25 Q. And how long have you been back in Cambodia since the other

1 places you have lived?

2 A. Since 1998. I went there and I became a Senator.

3 Q. Do you know -- strike that.

4 Do you know Sander DeMontero?

5 A. Yes, I do.

6 Q. How do you know him?

7 A. I know him because I was introduced. He was working with
8 the Assistant Deputy Assistant in Funcipec party.

9 Q. And through him -- do you remember when it was you met him
10 approximately?

11 A. I do not have the exact date but I remember maybe around
12 2003 or after or a little bit before. I'm not sure.

13 Q. All right.

14 Have you also met Michael Pepe?

15 A. Yes. Often.

16 Q. And would you be able to recognize him if you looked around
17 the courtroom today?

18 A. Yes. I remember him well.

19 MR. GUNN: Your Honor, may the record reflect he has
20 identified Mr. Pepe.

21 THE COURT: I don't know who he identified but
22 Mr. Pepe identified himself, so . . .

23 BY MR. GUNN:

24 Q. How did you meet Michael Pepe?

25 A. After Mr. Sander introduced him to me and he told me about

1 how interested that he would like to explain or teach my
2 teacher -- my student and explain to some of the Cambodian
3 parents.

4 Q. When he -- did he tell you about a school supply
5 distribution program he had?

6 A. Yes.

7 Q. What did he tell you that program involved or what did he
8 tell you about what he did in that program or through that
9 program?

10 A. He explained to me that he know very well Cambodian
11 children's are poor. They need badly pencil, book, eraser, and
12 the blackboard, little blackboard.

13 Q. Did he tell you that he had a program where he distributed
14 those to children as gifts?

15 A. Yes.

16 Q. Did you, after that, participate with him on going on some
17 school supply distribution trips?

18 A. Yes. Quite often. And sometime I also explain to them
19 regarding what he felt about the democracy of the country.

20 Q. About how many times would you say you went on school
21 supply distribution trips with him?

22 A. More than ten time. And if you count how many student, is
23 over 10,000 student.

24 Q. Were the locations you went to with him all just close to
25 Phnom Penh or were there some that were further away?

1 A. It's -- some in Phnom Penh, some in the suburb, and usually
2 sometimes it's far away, hundreds of miles away from Phnom Penh.

3 Q. Was one of the locations you went to a naval base called
4 Ream Naval Base?

5 A. Yes.

6 Q. And how far away is that from Phnom Penh?

7 A. Over a hundred mile.

8 MR. GUNN: Your Honor, could I approach and have some
9 exhibits marked as 371 -- 370 through 373?

10 THE COURT: You may.

11 MR. GUNN: Providing copies to counsel.

12 THE COURT: Thank you.

13 MR. GUNN: And a copy for the Court and originals.

14 (Defendant's Exhibits 370 through 373 were marked)

15 BY MR. GUNN:

16 Q. Mr. Khieu, I would first like you to look at Exhibits 370,
17 371, and 372, the photographs that have been placed in front of
18 you.

19 Just looking at those three photographs for now, do
20 you recognize them?

21 THE INTERPRETER: There's four, Counsel.

22 BY MR. GUNN:

23 Q. I think it's a letter and three photographs; is it not?

24 THE COURT: It's three photographs.

25 THE INTERPRETER: Let's see here. 70, 71 --

1 MR. GUNN: I just want him to look at the three
2 photographs.

3 THE INTERPRETER: 72.

4 THE COURT: That's it. Stop there.

5 THE WITNESS: Yes. I remember very clear this is the
6 project that he and I went. It's a base, naval base in Ream.

7 BY MR. GUNN:

8 Q. Let me ask you a question to get us focused.

9 Are those three photographs from one of your school
10 supply distribution trips, one or more of your school supply
11 distribution trips to Ream Naval Base?

12 A. Yes.

13 Q. And do those show you and/or Mr. Pepe distributing school
14 supplies?

15 A. Yes.

16 MR. GUNN: Your Honor, offer 370, 371 and 372 into
17 evidence.

18 MR. LULEJIAN: No objection.

19 THE COURT: Those will come in. Thank you.

20 (Defendant's Exhibits 370 through 372 were received)

21 BY MR. GUNN:

22 Q. Is this the photograph that's marked as Defense
23 Exhibit 370?

24 A. Yes.

25 Q. And is this you?

1 A. Yes.

2 Q. And is this Mr. Pepe next to you?

3 A. Yes.

4 Q. And what is this pink item that I am circling my pen around
5 here?

6 A. Stationery.

7 Q. So those were the school supplies that you were
8 distributing?

9 A. Yes.

10 Q. Is this Defense Exhibit 371?

11 A. Yes. That's the same.

12 Q. And that's you there?

13 A. Yes.

14 Q. And that's you handing out school supplies to the children?

15 A. Yes.

16 Q. And then is this Defense Exhibit 372?

17 A. Yes.

18 Q. Is that you there?

19 A. Yes.

20 Q. Is that Mr. Pepe?

21 A. Yes. He have his form of uniforms --

22 Q. This is him handing out school supplies here and you
23 getting more off the table here?

24 A. Yes.

25 Q. Would you now look at Defense Exhibit 373.

1 Is that a letter you wrote that is stapled to a copy
2 of an envelope it was sent in?

3 A. Yes. This is official letter that I sent to him to thank
4 him for what he has done.

5 Q. With respect to the school supply distribution?

6 A. Yes. That's when -- at the Socrates Foundation.

7 Q. You said the Socrates Foundation. Is that what he called
8 the school supply distribution group?

9 A. Yes.

10 MR. GUNN: Your Honor, I would offer 373 into
11 evidence.

12 MR. LULEJIAN: No objection.

13 THE COURT: That will come in.

14 (Defendant's Exhibit 373 was received)

15 MR. GUNN: No further questions.

16 THE COURT: Cross-examination?

17 MR. LULEJIAN: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. LULEJIAN:

20 Q. Good afternoon, sir.

21 A. Good afternoon.

22 Q. You testified a moment ago that you met the defendant
23 through Sander DeMontero; is that right?

24 A. That is correct.

25 Q. And prior to being introduced to the defendant by

1 Mr. DeMontero, you had never met him before?

2 A. That's correct.

3 Q. You had never spoken with him before?

4 A. No.

5 Q. Never eaten with him before?

6 A. No.

7 Q. Never heard of him before?

8 A. No.

9 Q. It was only after Mr. DeMontero made the introduction that
10 you got to know the defendant?

11 A. After Mr. DeMontero told me about him, showed me the
12 project and the activity that they did to help the children,
13 that's how I became interested to join him in order to do that.

14 Q. So the defendant ran what you would call a non-governmental
15 organization; is that right?

16 A. Yes.

17 Q. Are non-governmental organizations required to register
18 with the Cambodian government?

19 A. That is true.

20 Q. Was the Socrates Foundation registered with the Cambodian
21 government as an NGO?

22 MR. GUNN: Objection, irrelevant, Rule 403,
23 Your Honor.

24 THE COURT: Overruled.

25 THE WITNESS: I do not see the authorizations from the

1 Government but personally I see the American citizen happy to
2 help and I'm glad to accept.

3 BY MR. LULEJIAN:

4 Q. So even though an NGO doesn't follow the rules, as long as
5 they are willing to help the Cambodian people, that's okay?

6 MR. GUNN: Objection, argumentative, Your Honor.

7 THE COURT: I don't know what the question means so
8 I'll sustain the objection.

9 MR. LULEJIAN: I'll bring it up in a minute,
10 Your Honor.

11 Q. Before I forget, are you a citizen of any other country,
12 sir?

13 A. I'm an American citizen.

14 Q. And you became naturalized to this country?

15 A. Yes.

16 Q. And in the process of becoming naturalized, you took the
17 test that all new citizens have to take?

18 A. Yes. Yes.

19 Q. One of the topics of that test is the judicial system and
20 the respect for it?

21 MR. GUNN: Objection. Irrelevant, Your Honor.

22 MR. LULEJIAN: I will tie it up in a few minutes,
23 Your Honor.

24 THE COURT: All right. I'll allow it.

25 THE WITNESS: Yes. I follow the -- yes. The

1 requirement to become a natural citizen, I have to accept.

2 BY MR. LULEJIAN:

3 Q. Now, after you met Mr. Pepe, he offered to help you with
4 your -- with the distribution of the school supplies, right?

5 A. Yes. And he also mentioned about democracy and the right
6 of the student and also did explain all those to the teacher.

7 Q. So democracy was important to the defendant then?

8 A. Yes. And also have a monk join them.

9 Q. So it was fair to say that the defendant was eager to help
10 you with your outreach program?

11 A. Yes.

12 Q. Has the defendant ever been to your home?

13 A. I invite him into my house to have coffee before we travel
14 to distribution of those gifts. That's my wife also was there.

15 Q. How many times, sir?

16 A. I don't recall exactly but at least five times.

17 Q. Have you ever been to the defendant's home?

18 A. Yes.

19 Q. Approximately how many times?

20 A. Twice in a very short period of time. But outside in the
21 yard, quite often when I pick him up in order to travel to
22 distributing the gift.

23 Q. Did you ever go inside his home?

24 A. Yes. In the living room.

25 Q. Did you ever go upstairs?

1 A. No.

2 Q. You never went to the defendant's bedroom?

3 A. No.

4 Q. Never went to the room next door to the defendant's
5 bedroom?

6 A. No.

7 Q. When you were at the defendant's home, did you see children
8 there?

9 A. Sometimes I do.

10 Q. How old were the children?

11 A. To me maybe look like 13.

12 MR. LULEJIAN: One moment, please.

13 Q. Did you see one by the name of Chanry at the house?

14 A. I -- I don't recognize the name, and I don't know whether I
15 met her or not because I don't spend a whole lot of time in
16 there.

17 Q. Do you know if defendant is married?

18 A. He told me that he's divorced.

19 Q. The person he is divorced from, is she Cambodia?

20 A. He is divorced from the Caucasian or American citizen.

21 Q. Did you see Mr. Pepe with a Cambodian woman who you would
22 describe as a girlfriend?

23 A. Yes. A petite woman. I do not remember her name.

24 Q. Where did you see her?

25 A. At the time that we took the gift in order to distribute to

1 the children.

2 Q. So she came on the trip with you?

3 A. Yes.

4 Q. Mr. Pepe was arrested on June 17th of 2006; is that right?

5 THE INTERPRETER: 2006, Counsel?

6 MR. LULEJIAN: Yes, sir.

7 THE WITNESS: Yes.

8 BY MR. LULEJIAN:

9 Q. After Mr. Pepe was arrested, you were pressured to offer
10 assistance, weren't you?

11 MR. GUNN: Objection. Outside the scope, Your Honor.

12 THE COURT: Overruled.

13 THE WITNESS: Well, I willing to help because I felt
14 that he did help the Cambodian children.

15 BY MR. LULEJIAN:

16 Q. My question is after Mr. Pepe was arrested, you were
17 pressured to help him, weren't you?

18 A. Nobody pressured me. At the time I wasn't in the country.

19 Q. On March 4th of this year, did you meet with Special Agent
20 Gary Phillips in your office in Phnom Penh?

21 A. Yes.

22 Q. And did you tell Special Agent Phillips that when Pepe was
23 arrested, he, being you, was pressured to offer him assistance?

24 A. Plus not only that, I felt so bad. My tear came out
25 because I felt sympathize with him.

1 Q. But you didn't do anything, did you?

2 A. I have so many thing to do, I unable to help him only.

3 Q. But afterwards, you did help some people involved in that
4 case, in the Cambodian case, didn't you?

5 MR. GUNN: Objection. Outside the scope, Your Honor.

6 THE COURT: Overruled.

7 THE WITNESS: I don't think that I help them in a full
8 capacity.

9 BY MR. LULEJIAN:

10 Q. In fact, you have launched an investigation on your own to
11 find out what happened to mothers whose daughters were living
12 with Mr. Pepe, haven't you?

13 A. Before I came to United States, five day before I came
14 here, I want to know exactly what's happening, and I did -- I
15 went to meet with the grandmother in the Tak Mao city. It is my
16 job as a member of the Parliament.

17 Q. You met with Ly Kim Eng's family, didn't you?

18 A. I met with the mother, grandmother, and also the aunt.

19 Q. You met with Kumlang and their family, didn't you?

20 A. Yes.

21 Q. You're not a member of the Ministry of Justice?

22 A. No. But I'm the representative. I'm a member of the
23 Parliament. I am the one that create the legislative, and I
24 would like to follow what I am creating.

25 Q. In fact, you found out that the children of Kumlang and Ly

1 Kim Eng are currently with a non-governmental organization;
2 isn't that right?

3 A. I'm not sure.

4 Q. You didn't go to the police after meeting with the two
5 women, did you?

6 MR. GUNN: I object. This is outside the scope, Your
7 Honor.

8 THE COURT: Overruled.

9 THE WITNESS: I did met with the police before I came.
10 I want to know the truth.

11 BY MR. LULEJIAN:

12 Q. In fact, you --

13 A. I did meet with the official in the -- actually the judge
14 in the judicial -- I did meet with the people in the court, call
15 it the trial court. And also the appeal court in Phnom Penh.

16 Q. So you met with the judge by the name of -- I am going to
17 spell it. S-A-O, next word is M-E-A-C-H, Sao Meach?

18 A. Sao Meach.

19 Q. My apologies, sir.

20 You met with this judge?

21 A. Yes.

22 Q. You talked to him?

23 A. Yes.

24 Q. You advocated on behalf of the mothers?

25 A. I just asked him what's happened in this case.

1 MR. GUNN: I object. This is outside the scope, 403,
2 irrelevant.

3 THE COURT: It seems relevant to me.

4 How much more do you have, Mr. Lulejian.

5 MR. LULEJIAN: Probably ten minutes, Your Honor. If
6 you would like me to stop -- I could finish up this line of
7 questioning and then finish him on Monday or Tuesday.

8 MR. GUNN: If we could finish, I think Mr. Khieu would
9 like to go back to Cambodian.

10 THE COURT: That may be but it's the Friday before
11 Memorial Day weekend and we have one juror with at least a 210
12 mile drive.

13 MR. LULEJIAN: Let me ask him some short questions and
14 I'll just be finished.

15 THE COURT: Okay.

16 MR. LULEJIAN: Okay. I'm sorry, we will finish on
17 Tuesday, we'll stop here.

18 THE COURT: Okay.

19 Ladies and gentlemen, don't talk about the case or
20 form or express any opinions about the case until it's finally
21 submitted to you. You are ordered to return on Tuesday at 8:00
22 a.m. You're ordered to stay healthy and safe and have a great
23 Memorial Day weekend.

24 (Jury Out)

25 THE COURT: Sir, you are ordered to return on Tuesday

1 at 7:45 a.m.

2 THE WITNESS: Okay.

3 THE COURT: You may be seated.

4 MR. GUNN: Your Honor, may I speak with my
5 investigator for one minute?

6 THE COURT: You may.

7 I didn't want to state the specific reasons for my
8 rulings in front of the jury, but it seems to me that
9 Mr. Lulejian's line of questioning quite clearly goes to bias
10 which is never outside the scope, and that's the basis of my
11 ruling.

12 MR. GUNN: I appreciate the Court not articulating
13 that in front of the jury. I wanted to make my objections. I
14 understand the Court's position.

15 THE COURT: Okay. What do we need to talk about other
16 than jury instructions? What else do we have on tap for
17 Tuesday?

18 MR. GUNN: I can tell the Court about the Defense
19 case. I am sort of keeping track of the witnesses. I guess
20 that's the reason I am talking instead of Mr. Brown.

21 We have -- we will finish Mr. Khieu and then we have
22 either two or three more lay witnesses, which should be short,
23 and then we have the deposition, and then we will be done, at
24 least that's unless we have some different idea over the
25 weekend, which I don't expect.

1 THE COURT: So again at least a full day on --

2 MR. GUNN: Yes. The depositions, the four hours -- I
3 would hope the other witnesses will be 10, 15 minutes, but I
4 don't know for sure.

5 THE COURT: Ms. Donahue, I don't know whether you
6 still intend to call a rebuttal witness after you heard the
7 testimony of the Defense expert, but should you decide to do so
8 and want to have that person here on Tuesday, we will interrupt
9 the deposition or whatever else we're doing to put that witness
10 on the stand, if you decide you want or need her. I don't want
11 to take a risk of putting her off to another day and not having
12 her be available.

13 MS. DONAHUE: Thank you, Your Honor. We may not put
14 her up. I need to think about it. Right now she is firmly
15 planned to arrive Monday and be available Tuesday morning here
16 to testify and has organized her schedule around that. I will
17 speak to Defense counsel. Should it turn out we are going to
18 call her, I may ask for that.

19 Other than that, right now, I -- any other rebuttal
20 would be maybe Special Agent Phillips for something very
21 discrete and short.

22 THE COURT: Okay.

23 All right. I had a couple of thoughts as the
24 testimony was coming in about jury instructions. Ordinarily I
25 would add an instruction about the testimony being the evidence

1 and not the transcripts, but in this case we couldn't really
2 hear testimony and the transcripts are in evidence so I'm
3 inclined not to give that instruction.

4 MR. GUNN: Plus there is case law and a Ninth Circuit
5 instruction on this point that says when the tapes are in a
6 foreign language, the transcripts are admissible and are
7 evidence.

8 THE COURT: So is there anything you want to do about
9 that at all?

10 MR. GUNN: You know, we could have that instruction
11 but I think the jury will think that -- if they're not
12 instructed on it, they are just going to assume it. Unless
13 there is something in our instructions that says to the
14 contrary, but I don't think there is, is there?

15 THE COURT: I don't think there is, and I think the
16 instruction about translations makes sense if one of the jurors
17 speaks that language, but our jurors have confirmed that they
18 don't speak those languages. So they're not going to be
19 listening to the Cambodian and using it instead of the English
20 translation.

21 MR. GUNN: So I think we can just leave it as the
22 record now reflects they are in evidence, we will have them in
23 as exhibits and no instructions and the jurors will just assume
24 they get them like anything else.

25 THE COURT: I also had a different thought. I think

1 you can see from my instructions that I had sustained, in
2 effect, the Defense objection to the instruction about the adult
3 attendant; however, Dr. Maloney was asked about whether he would
4 ever have an adult attendant or something about witness on the
5 lap. I think I actually made a comment. It wasn't directly --
6 it wasn't that the witness was entitled to the attendant. It
7 was that the attendant had to be videotaped and that was
8 required by law. I still think we are probably okay but if the
9 Government has a concern about that, I will reconsider my ruling
10 based on the questioning of Defense counsel.

11 MS. DONAHUE: When Defense counsel said that, it
12 re-raised, at least for me, the notion that they are probably
13 planning to argue or include the fact in their argument that
14 there was an attendant with a child and that somehow that
15 influenced the child. And therefore, if they are going to do
16 that, I think it's appropriate for the jury to know that that
17 law permits every child witness to have an attendant up there.
18 It's not special or in any way unusual to this case.

19 THE COURT: Or that it was not the Government's idea
20 to try to influence the witness.

21 MS. DONAHUE: Yes, that's exactly right. That we
22 weren't trying to somehow improperly influence them. And I
23 expect there to be at least if not a direct argument some
24 insinuation of that, as came out this morning in the
25 questioning. So in light of that, we would submit that it's

1 appropriate.

2 The initial version that I had proposed to Defense
3 counsel tracked the language of the statute, 18 U.S.C. 3509(i)
4 which says the child witness is entitled to an attendant, I
5 think it's for the purpose of comfort and care. And at defense
6 counsel's request, I took out the last "for the purpose of
7 helping" so it simply says "they are entitled to it," period,
8 which I think is accurate and appropriate.

9 MR. GUNN: Your Honor, it is definitely possible we
10 will -- we will certainly not say the Government has anything to
11 do with it, but we will certainly suggest that part of this
12 whole process of the interview process -- and I don't think
13 coaching is quite the right word -- but contamination and
14 suggestion and so on is then further aggravated when the child
15 has an adult attendant up there while she's testifying whom
16 she's told these things to already.

17 So it will certainly probably be overtly argued. I
18 mean, Mr. Brown hasn't outlined his complete closing yet
19 obviously, but I don't think that means there should or needs to
20 be an instruction. I mean, it's certainly not going to be any
21 position or suggestion that the Government is at fault for that.

22 THE COURT: I think if there is going to be any
23 mention of it at all, that it's appropriate to instruct the jury
24 that the law allows this.

25 MR. GUNN: Okay. We object.

1 THE COURT: Okay.

2 MR. GUNN: And the Court will do what it does.

3 I do think it's important to do it -- and I assume the
4 Court will probably do this in a completely neutral way that
5 doesn't it's a good thing or a bad thing.

6 THE COURT: I would make a facetious comment but it
7 just doesn't look good on the record when one does it, so of
8 course it will be neutral, and you will have an opportunity to
9 review it and comment on it when I draft it.

10 MR. GUNN: We will see what the record looks like on
11 what I just said.

12 THE COURT: It's frightening sometimes how. . .

13 Let's just briefly go over the comments I made. I
14 added -- as I was looking at these, I added to Instruction 14,
15 the second paragraph. The reason I made it a second paragraph
16 instead of a new instruction is that I had already numbered
17 these, but obviously I am going to have to renumber them anyway.

18 And the second paragraph, which is much too broad for
19 what actually happened in the case, relates to that one chart
20 with the three items that I actually didn't allow into evidence
21 but I allowed Mr. Lulejian to show. I don't know that it's even
22 worth adding this whole paragraph in for that but I just put it
23 in there so everybody could consider it.

24 MR. GUNN: There is also a couple Defense exhibits.
25 There are several spreadsheets and a table --

1 THE COURT: Right. But those are in evidence so the
2 first paragraph that everybody had agreed to anyway covers that.

3 MR. GUNN: I understand.

4 THE COURT: So I am happy to remove the second
5 paragraph. I just wanted you all to be able to consider that.

6 MS. DONAHUE: I think the first paragraph covers it.
7 The second paragraph is -- maybe unnecessary language we don't
8 need to give the jury.

9 THE COURT: Do you have a thought, Mr. Gunn?

10 MR. GUNN: I don't have a strong opinion one way or
11 the other.

12 THE COURT: Let's just take it out.

13 17 -- 17 was my -- I think I agree with you Mr. Gunn,
14 that both instructions need to be given, 16 and then 17 which as
15 noted in the Ninth Circuit model instruction language, needs to
16 be inserted in the brackets. I put in two concepts that I have
17 in mind and I think there is really a third concept. I wasn't
18 quite sure how to formulate, but I think the third concept is
19 the one that the Government has repeatedly mentioned which is
20 something like -- and I certainly wouldn't say it to the jury
21 this way, but the concept is the true nature of the defendant's
22 interest in children.

23 I -- I guess my question would be to the Government,
24 what do you intend to argue? I certainly don't want to instruct
25 them to consider it for anything that's broader than what you

1 actually intend to argue from that evidence. And reminding you
2 again that we don't want -- even if my thought is that it's
3 relevant for a particular issue, that doesn't necessarily mean
4 we have to tell the jury that they can consider it for that. So
5 narrower is safer but I'll hear from you about --

6 MS. DONAHUE: A little bit circular because I was
7 waiting to see exactly what you were going to do with this
8 instruction before finishing, crafting up part of the argument.
9 Frankly, waiting for two things. One that, and two, we're
10 getting more and more about this -- what really is character
11 evidence. He is so interested in helping out these poor
12 children. And the more that comes in, the more I think it's
13 appropriate to respond and say here is really --

14 THE COURT: One of the jurors is on the phone and says
15 she needs to speak to me. I will go talk to her and let you
16 know what she says.

17 (Discussion off the record)

18 THE COURT: Counsel, we have had a discussion off the
19 record about my conversation with a juror and I assume you all
20 accept my representation, although Mr. Pierson is here to
21 confirm it, if you wish. The conversation that I had with the
22 juror, and that you have also confirmed that no one sees any
23 reason to put the content of the conversation on the record.

24 MS. DONAHUE: The Government agrees with that,
25 Your Honor.

1 MR. BROWN: The Defense is also agreeable.

2 THE COURT: It had nothing to do with the substance of
3 the case or any improper conduct by any witness, juror or
4 anything else.

5 Everyone agree?

6 MR. BROWN: Yes, Your Honor.

7 MS. DONAHUE: Yes, Your Honor, I agree.

8 MR. GUNN: Yes, Your Honor.

9 THE COURT: All right. So Ms. Donahue, I am sorry,
10 you were interrupted and you were waiting to hear what I was
11 going to say --

12 MS. DONAHUE: I was wanting to argue within the scope
13 of your jury instruction, frankly, and also waiting to see what
14 also comes in on the Defense case because --

15 THE COURT: Which isn't over yet.

16 MS. DONAHUE: We have maintained all along that his
17 sexual interest in children is highly relevant. The more
18 testimony that comes in to suggest that his interest in children
19 has other motives, it is our view the more relevant that
20 becomes. And probably -- not probably, but certainly it will be
21 argued in the open/close very conservatively, in accordance --
22 really strict accordance with the Court's instruction.

23 Depending on what they say in their close, we may come
24 to sidebar and just say -- maybe argue a little broader in
25 response to what they say.

1 But it seems that all these high-ranking people from
2 Cambodia have come in here and said that he has this interest in
3 the welfare of poor children in Cambodia. And in arguing that,
4 we think frankly that is so absurd. The pornography is one
5 piece of evidence. But I plan to keep it very, very narrow, at
6 least in the open/close, and limit it -- you stated identity and
7 supporting the credibility. And perhaps maybe -- I don't know
8 if the Court thinks it's appropriate to tell the jury in
9 considering the testimony of the Defense witnesses, one thing to
10 keep in mind are the photographs found on defendant's computer.

11 THE COURT: I don't think I would say it that way, if
12 I were going to say anything. And I -- I guess I would leave it
13 at this, so long as the Defense wasn't then going to object to
14 the argument as you've just described it, because I think it's
15 well within what I'm allowing the evidence for.

16 The touchy part is to try to say that in a neutral way
17 and without pointing fingers at the defendant -- I mean, to say
18 the true nature of the defendant's interest in children is
19 certainly not an appropriate way to say it. I'm not sure -- you
20 know I know it when I see it, but I don't know how to articulate
21 it.

22 MS. DONAHUE: I am thinking very carefully about that
23 and we will stay fairly far away from it in the open/close and
24 then we will see what they have to say about it in their
25 closing, and then I will ask your permission before launching

1 too far -- before expanding on that in rebuttal.

2 THE COURT: Mr. Gunn?

3 MR. GUNN: I see the Court's 404(b) instruction, and
4 I'm -- I think No. 2, your clause or whatever we want to call it
5 2 is a perfectly reasonable way to express the identity concept
6 which as court knows I have objected to. But it was pretty
7 clear the Court was letting it in for at least that. I would
8 just note that I don't think -- I don't think it's admissible.
9 I guess I would object to it being considered substantively
10 under 404(b) as to the credibility of the children.

11 THE COURT: Let me stop you and ask, Ms. Donahue, if
12 you are not going to argue it in that context, then we should
13 take it out, whether or not I have admitted for that purpose.

14 MS. DONAHUE: What? The credibility of the kids?

15 THE COURT: Yes.

16 MS. DONAHUE: I was going to argue --

17 THE COURT: Okay. I think that's appropriate.

18 MS. DONAHUE: He challenged the credibility on --

19 THE COURT: Yes. And I'll let you finish, Mr. Gunn.
20 I just wanted to make sure.

21 MR. GUNN: I think the only way -- I think it only
22 gets to credibility through a propensity reasoning, I guess is
23 my thinking. It seems to me the only way -- it does, in a
24 sense, logically reflect on credibility because it shows in a
25 logical deductive sense that maybe he has a propensity to be

1 interested in abusing children, which logically makes it more
2 likely he would. But that's the propensity reasoning that
3 404(b) says we don't do, even though it has some logic to it.

4 And I think when you are saying it's being used to
5 judge their credibility, that's really the way it's being used.
6 That's one of the steps in the reasoning there is a step to the
7 propensity reasoning.

8 So I don't -- even though it may logically go to that
9 from one chain of deductive reasoning, I don't think the
10 chain -- the chain has that propensity link in it, and that's
11 what you're not allowed under 404(b), even if it's logically
12 defensible. So that's my objection and thinking on Clause 1.

13 MS. DONAHUE: It's admissible -- the 404(b) analysis
14 goes to Clause 2, identity as modus operandi. Setting aside
15 404(b), it just is evidence that corroborates what the victims
16 had to say in this case.

17 THE COURT: I think that's the analysis that I was
18 making was it's sort of separate from the 404(b) it's just --

19 MS. DONAHUE: It's like the physical items that were
20 seized from the house. Those are also evidence that sort of are
21 itemizing what evidence is there to corroborate testimony of the
22 victims since it was challenged both through cross-examination
23 of them and now through the Defense expert, and clearly is going
24 to be the subject of the Defense closing.

25 But -- so it seems to me it's like an itemization of

1 what supports -- what corroborates the testimony of these
2 particular witnesses.

3 Separate from that, is this the person who did this or
4 is this not the person who did this that's the evidence of
5 identity.

6 My issue -- and I was thinking of not -- maybe just
7 leaving the third -- the third area, third altogether for
8 rebuttal. That's probably the most appropriate thing for the
9 Government.

10 THE COURT: All right. Well, again, think about it,
11 and we don't want to push the envelope, but it seems to me to be
12 quite clearly relevant on that subject and so until I hear
13 further from you, that would be the instruction I would give.

14 MR. GUNN: Your Honor, we are going to make the formal
15 objections at another time when we have the final --

16 THE COURT: Sure. I added No. 18 after hearing about
17 tapes yesterday and statements by Mr. Pepe to Mr. DeMontero.
18 And obviously we have heard a whole bunch of other statements by
19 the defendant.

20 And I view that as a defense protective instruction so
21 I will look at you and just verify that you want that.

22 MR. GUNN: I think that's fine.

23 THE COURT: Okay.

24 Oh, 12 would be the judicial notice instruction,
25 assuming that Mr. Lulejian is going to give me something that

1 can actually be read or provided to the jury.

2 MS. DONAHUE: We will, Your Honor.

3 THE COURT: And then 13 is the instruction I drafted
4 for the deposition testimony, if anybody has any comments on.
5 That last paragraph was the --

6 MR. GUNN: What about adding "it should not be
7 considered by you in any way"?

8 THE COURT: I'm sorry. What?

9 MR. GUNN: Add to the first sentence of the paragraph
10 "and should not be considered in any way."

11 THE COURT: "And should not be considered in any way."
12 Okay.

13 MR. GUNN: The word "therefore" may not -- may need to
14 be adjusted or something. I don't know if it flows as easily
15 then either.

16 THE COURT: I can just take out "therefore" and say
17 "You may consider all the testimony presented."

18 Instruction No. 22 and 23, as I indicated in the note
19 I gave you, that 22 used to have the next instruction included
20 in it but once -- since it referred to preponderance of the
21 evidence and preponderance isn't defined until later, I moved
22 the preponderance or copied the preponderance instruction into
23 23.

24 And then I thought it needed to be broken down because
25 I didn't want to have it appear as if all of that Instruction

1 No. 22 only needed to be proved by a preponderance. Actually,
2 it's -- the first part talks about things that the Government
3 doesn't need to prove at all.

4 MS. DONAHUE: That makes sense, Your Honor.

5 THE COURT: Mr. Gunn?

6 MR. GUNN: I think that looks fine, Your Honor.

7 THE COURT: Well, this is not the final so you can
8 obviously take a look at again.

9 MR. GUNN: The only hesitance I had was when I first
10 read it I missed the words the "Government must prove." So I
11 thought it applied to all issues except the one in Instruction
12 No. 27. Read more carefully, that's not what it's saying, but I
13 don't know -- I am getting punchy at the end of the day.

14 THE COURT: And I was punchy last night when I was
15 doing it so you can certainly think about it over the weekend.

16 And as I noted, I looked back in the instructions. I
17 don't know where the Government got 4.12. It hasn't existed
18 since 2003.

19 MS. DONAHUE: I will not disclose my source, although
20 it is a couple of lawyers very recently before you. So I will
21 leave it at that. But anyway, I'll --

22 THE COURT: Well, we made substantial changes, for
23 various reasons, because we had so many witnesses we didn't even
24 know who was an accomplice.

25 MS. DONAHUE: Yes.

1 THE COURT: But in this case we are talking about just
2 one witness. And the Ninth Circuit instruction, as I said, was
3 revised in 2003 to combine all of those concepts. Otherwise, I
4 have to read the introductory sentence and the last sentence
5 three times, which doesn't make any sense especially when it's
6 the same witness.

7 No. 27 I have revised so that it's the one proposed by
8 the Defense. Just adding in that caveat that the proof beyond a
9 reasonable doubt also applies to the instruction we have just
10 spoken about. That's all I have at the moment.

11 Anything you can think of that we need to be aware of
12 before Tuesday?

13 MR. BROWN: Your Honor, I did have a personal request
14 on behalf of Mr. Pepe. I don't know if it has to be on the
15 record or not.

16 THE COURT: We can go off the record.

17 (Discussion off the record)

18 THE COURT: Anything else?

19 Have a healthy, safe, Memorial Day weekend. We will
20 see you 7:45 on Tuesday.

21 (Proceedings concluded at 2:31 p.m.)
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
HONORABLE PHILIP S. GUTIERREZ, JUDGE PRESIDING
UNITED STATES OF AMERICA,)
)
)
)
Plaintiff,)
)
)
Vs.) No. CR07-168 (A) -DSF
)
)
MICHAEL JOSPEH PEPE,)
)
)
)
Defendant.)
)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
JURY TRIAL, DAY 11
LOS ANGELES, CALIFORNIA
TUESDAY, MAY 27, 2008

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EXHIBITS:

Exhibit 2112 received	14
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1 LOS ANGELES, CALIFORNIA; TUESDAY, MAY 27, 2008; 0800

2 ---

3
4 THE COURT: Good morning.

5 MR. BROWN: Good morning, Your Honor.

6 MS. DONAHUE: Good morning, Your Honor.

7 THE COURT: Is there anything we need to discuss
8 before the jury comes in?

9 MR. GUNN: There were some phone calls. I talked
10 to the Government about putting in additional MDC calls.
11 We're seeing if they agree, Your Honor.

12 THE COURT: I assume that's in the Government's
13 rebuttal case?

14 MS. DONAHUE: It is, Your Honor.

15 THE COURT: I believe at least four hours from now.

16 MS. DONAHUE: Exactly right, Your Honor.

17 MR. GUNN: Only if there needs to be different
18 excerpts prepared.

19 THE COURT: Is the Government going to provide a
20 copy of the first superseding indictment to provide to the
21 jury, or are you planning on not having the indictment go
22 back? It doesn't matter to me.

23 MS. DONAHUE: I think we will have the indictment
24 go back. I will provide you a copy, Your Honor.

25 THE COURT: Defense, any objection to that?

1 MR. GUNN: That's fine.

2 THE COURT: I did make some revisions to the jury
3 instructions. I added Jury Number 11 which relates to the
4 adult attendant. I made a slight change that I think
5 Mr. Brown suggested to Instruction Number 14, took out the
6 second portion of the charts and summaries. So far, I left
7 18 as it was when last we spoke.

8 Recognizing that I may be giving these tomorrow --
9 I hope I'm giving these tomorrow -- unless I hear further,
10 this is the set I plan to give. The only change I see making
11 right now is simply choosing whether to give the instruction
12 about defendant testifying or not testifying.

13 MR. GUNN: If the Government plays the excerpts of
14 MDC calls and gives transcripts to the jury, then we may need
15 an instruction on the tapes being the evidence when they're
16 in English, but the transcripts being the evidence when it's
17 in a foreign language. There's pattern Ninth Circuit
18 instructions on that. I think they suggest reading at the
19 time of tape, though, I don't know. It probably makes sense.
20 The jury is going to wonder why they aren't able to keep the
21 transcripts.

22 THE COURT: They won't get to take them into the
23 jury room. I'm happy to read it or tell them about it
24 beforehand.

25 I also gave you a copy of the verdict form. The

1 changes I made are not substantive. I made it consistent
2 and -- grammatical isn't the word, but it follows the grammar
3 I learned when I was in school which is numbers over ten are
4 in numerals. I did -- I took out the parenthesis which was
5 inconsistent. There was a typographical error in Count 7.
6 Under was, "U-N-D."

7 I did get from the Government something Saturday
8 afternoon. I don't know whether you actually sent it
9 Saturday afternoon or whether it just showed up Saturday
10 afternoon.

11 MR. LULEJIAN: What was it, Your Honor?

12 MS. DONAHUE: It was the verdict form. No. It was
13 sent before that. Our servers have had some issues.

14 THE COURT: You were both right. You had sent it
15 and I hadn't received it.

16 MR. LULEJIAN: Which doesn't really surprise me.

17 THE COURT: It didn't have any changes, I assume?

18 MS. DONAHUE: No. Thank you, Your Honor.

19 THE COURT: Anything else before the jury comes in?

20 MR. GUNN: One housekeeping matter, Your Honor.

21 With the Court's permission -- I don't know if we
22 need to say anything to the jury about this. I would like to
23 substitute for Defense Exhibits 282, 283, 284, which were the
24 hard copies of powerpoint slides from Dr. Bennett's
25 testimony. I inserted from Government Exhibit Number such

1 and such on the powerpoint, but I didn't have it on the hard
2 copies. I did it at the last minute. I am wondering if we
3 can substitute new 282 through 284 that have those references
4 so they match the powerpoint. I think the Government doesn't
5 have an objection to that.

6 MR. LULEJIAN: That's fine, Your Honor.

7 THE COURT: I don't think we need to make a comment
8 about that.

9 MR. GUNN: If I can approach the clerk?

10 THE COURT: Sure.

11 Anything else?

12 MR. LULEJIAN: At some point the Government is
13 going to need to move Exhibit 21-11, Dr. Craft's powerpoint
14 in evidence. Mr. Gunn reserved the right to object on a
15 slide-by-slide basis. We removed all the offending slides.
16 I will ask the Court to move it in evidence.

17 MR. GUNN: If I could look at the final version?

18 THE COURT: Sure.

19 MR. GUNN: Does the Court want an extra copy?

20 THE COURT: No.

21 MR. GUNN: I'll give a --

22 THE COURT: If I never see those pictures again, it
23 will be just fine.

24 MR. LULEJIAN: You and me both.

25 THE COURT: Anything else?

1 MR. LULEJIAN: Nothing, Your Honor.

2 (Open court - jury present)

3 THE COURT: Good morning. I hope you all had a
4 great holiday weekend.

5 Our witness is back on the stand. Both the witness
6 and the interpreter are still under oath.

7 Mr. Lulejian, you may continue.

8 MR. LULEJIAN: Thank you, Your Honor.

9 **Khieu San, Defense Witness, previously sworn**

10 **CROSS-EXAMINATION, resumed**

11 BY MR. LULEJIAN:

12 Q. Good morning, Mr. Khieu.

13 A. Good morning.

14 Q. Last week when we were speaking, we spoke about you
15 meeting the defendant through Sander Montero.

16 Do you remember that?

17 A. Yes.

18 Q. You testified about going out to the provinces. I think
19 it was 9 or 10 times with the defendant to hand out school
20 supplies?

21 A. Yes.

22 Q. The defendant was very anxious to work with you to
23 distribute these school supplies?

24 A. Yes.

25 Q. Most of the places you went to were in Kango Province;

1 is that right?

2 A. Yes.

3 Q. You're a member of the National Assembly?

4 A. Yes.

5 Q. The province you represent is Kango Province?

6 A. Yes.

7 Q. So it's a good opportunity for you to go out and meet
8 the constituents?

9 A. Yes.

10 Q. Good opportunity to get out there and show that you care
11 about their needs?

12 A. Yes.

13 Q. It's an opportunity for you to talk to your constituents
14 to see they elected the right man to the National Assembly?

15 A. Yes.

16 Q. The defendant helped you do that by accompanying you in
17 giving out the school supplies?

18 A. Okay.

19 Q. In addition to giving out school supplies, I think you
20 testified that he spoke about spreading democracy throughout
21 Cambodia?

22 A. Yes.

23 Q. The defendant doesn't speak Khmer, did he?

24 A. That is correct.

25 Q. So when you were in the province, you would translate

1 for him?

2 A. That is correct.

3 Q. When the defendant spoke about spreading democracy, what
4 did he speak about?

5 MR. GUNN: Objection. Irrelevant. Outside the
6 scope.

7 THE COURT: Sustained.

8 BY MR. LULEJIAN:

9 Q. Now, the defendant had an affinity for children, didn't
10 he?

11 MR. GUNN: Objection. Calls for opinion. Calls
12 for speculation.

13 THE COURT: Why don't you rephrase that,
14 Mr. Lulejian.

15 BY MR. LULEJIAN:

16 Q. Based on your observations of the defendant, he had an
17 affinity for children --

18 THE COURT: "Affinity" was the word I had a problem
19 with.

20 MR. LULEJIAN: "Affinity"?

21 THE COURT: I have a problem with that word.

22 BY MR. LULEJIAN:

23 Q. Based on your observation of the defendant, he got along
24 well with children?

25 A. Yes.

1 Q. I think you told Special Agent Phillips one time that he
2 actually loved children?

3 A. Yes.

4 Q. You told him he loved his students?

5 A. Yes.

6 Q. You said he talked and played with kids when you were
7 out in the provinces?

8 A. Yes.

9 Q. The defendant would give gifts to the children?

10 A. Yes.

11 Q. And by going out with the defendant into the provinces
12 and handing out school supplies and having breakfast with
13 him, you got a chance to know the defendant, didn't you?

14 A. Yes.

15 Q. You had a chance to go to his home?

16 A. Yes.

17 Q. I think you said that your visits to the home were
18 limited to the first floor only?

19 A. It's not limited, but I have no other reason to go
20 anywhere else.

21 Q. You never been upstairs in his house?

22 A. No.

23 Q. Never been to his bedroom?

24 A. No.

25 Q. Never visited any of the rooms on the second story?

1 A. No.

2 Q. Now, when you were downstairs in the common area, you
3 saw a cabinet, didn't you?

4 MR. GUNN: I object. It's outside the scope of
5 direct.

6 THE COURT: Mr. Lulejian?

7 MR. LULEJIAN: I can tie it up with a photograph,
8 Your Honor.

9 THE COURT: All right.

10 BY MR. LULEJIAN:

11 Q. I'm going to show you what has been admitted into
12 evidence as Government's Exhibit 1132 and 1133.

13 MR. GUNN: I believe I still object. It's still
14 outside the scope, Your Honor.

15 MR. LULEJIAN: If you would like me to lay some
16 foundation, I can, Your Honor.

17 THE COURT: The objection is, it is outside the
18 scope. Is it or is it not outside the scope?

19 MR. LULEJIAN: I would disagree, Your Honor.

20 THE COURT: Go ahead and show him the photograph.
21 We'll see where it goes.

22 BY MR. LULEJIAN:

23 Q. This is Exhibit Number 1132. This is Exhibit
24 Number 1133. Your picture is in that cabinet, isn't it?

25 A. I can't see it clearly.

1 Q. Let me zoom in, then.

2 MR. GUNN: Still object as outside the scope.

3 THE COURT: Overruled.

4 BY MR. LULEJIAN:

5 Q. This is a picture of you giving out school supplies with
6 the defendant, isn't it?

7 A. Yes.

8 Q. This picture is framed?

9 A. Yeah. I see.

10 Q. It's in the display cabinet in the defendant's house?

11 A. It's the defendant's display. I don't know.

12 Q. Now, in addition to handing out school supplies, you had
13 the opportunity to meet the defendant on other occasions as
14 well, didn't you?

15 A. Yes.

16 Q. In fact, one of those occasions, was something called
17 the plowing ceremony, wasn't it?

18 A. Yes.

19 Q. Mr. Khieu, I'm going to show you two exhibits, which
20 I've marked Number 2112 and 2113 for identification.

21 MR. LULEJIAN: May I approach, Your Honor?

22 THE COURT: Yes.

23 MR. GUNN: Object as outside the scope, Your Honor.

24 THE COURT: Overruled.

25 ///

1 BY MR. LULEJIAN:

2 Q. Mr. Khieu, let's take a look at Exhibit Number 2112.

3 Do you see that picture?

4 A. Yes.

5 Q. That's a picture of you and the defendant, isn't it?

6 A. Yes.

7 Q. And you're dressed up in the uniform of the National
8 Assembly, are you not?

9 A. Yes.

10 Q. The defendant is dressed up in a suit?

11 A. Yes.

12 Q. This picture was taken of the plowing ceremony in
13 Phnom Penh?

14 A. Yes.

15 Q. The plowing ceremony took place on May 16, 2006, did it
16 not?

17 A. Yes.

18 MR. LULEJIAN: Your Honor, the Government would
19 move the Exhibit 2112 into evidence.

20 MR. GUNN: Irrelevant, Your Honor.

21 THE COURT: I'll admit it.

22 **(Exhibit 2112 received)**

23 MR. LULEJIAN: May I publish, Your Honor?

24 THE COURT: You may.

25 ///

1 BY MR. LULEJIAN:

2 Q. Now, would you please take a look at Exhibit Number --
3 before I move on, who took this picture?

4 A. I don't remember. Either my wife or someone else. I
5 don't remember.

6 Q. Your wife was there as well?

7 A. Yes.

8 Q. Let's took a look at Exhibit Number 2113.

9 Do you have that in front of you? That's a picture
10 of your wife, isn't it?

11 A. Yes.

12 Q. She's standing with the defendant who is also wearing a
13 suit?

14 A. Yes.

15 Q. Your wife is wearing a similar uniform as you, isn't
16 she?

17 A. Yes.

18 Q. Does your wife have a position in the Cambodian
19 government?

20 A. Yes.

21 Q. What is that position?

22 A. The Secretary of State -- Secretary of State Planning.

23 Q. What does the Secretary of State Planning do?

24 A. She's the advice -- she's under the Secretary of State.
25 Minister of Planning.

1 Q. She's under the Secretary of State or the Secretary of
2 State for Planning?

3 A. Under.

4 Q. She works directly to the Minister of Planning?

5 A. Yes.

6 Q. Minister of Planning is one of the people in the
7 Cambodian government that helps run the country?

8 A. Yes.

9 Q. She has a very important position in the government,
10 doesn't she?

11 A. Yes.

12 Q. Your wife is part of the Funcinpec party as well?

13 A. Yes.

14 Q. The Funcinpec party is the one of the two main parties
15 in Cambodia along with the Cambodian People's party that make
16 up the Coalition Government?

17 A. Yes.

18 Q. This picture was taken of the plowing ceremony on May
19 16, 2006; is that right?

20 A. That is correct.

21 Q. In fact, you took this picture, didn't you?

22 A. Yes.

23 Q. The camera you used, that was the defendant's camera?

24 A. Yes.

25 MR. LULEJIAN: Your Honor, the Government would

1 move 2113 into evidence and ask that it be published.

2 MR. GUNN: Same relevance objection.

3 THE COURT: Admitted.

4 **(Exhibit 2113 received)**

5 BY MR. LULEJIAN:

6 Q. Could anyone attend the plowing ceremony, sir?

7 A. Yes.

8 Q. Was the defendant invited to attend the plowing
9 ceremony?

10 A. Yes, officially invited him there.

11 Q. Who officially invited him?

12 A. The organizer of the ceremony.

13 Q. So the plowing ceremony is an official government
14 ceremony?

15 A. Yes.

16 Q. So the defendant was invited to the plowing ceremony as
17 a guest of the Cambodian government?

18 A. Yes.

19 Q. All right.

20 Now, last week, we had talked about the events that
21 followed June 17th of 2006.

22 Do you remember?

23 A. Yes.

24 Q. On June 17th of 2006, the Cambodian National Police
25 arrested the defendant?

1 A. I knew that he was arrested through the newspaper.

2 Q. And you were not able to help him, were you?

3 A. No. I have no idea what it's all about.

4 Q. In fact, I think you said you were out of town when he
5 was arrested; isn't that right?

6 A. Yes.

7 Q. But you said you were pressured to offer assistance to
8 the defendant after his arrest; isn't that right?

9 A. No.

10 Q. You didn't testify last week that you were pressured to
11 offer assistance to the defendant following his arrest?

12 MR. GUNN: Objection, Your Honor. The testimony
13 last week speaks for itself.

14 THE COURT: It is simply a question.

15 You can answer the question, sir, if you remember
16 what you testified.

17 THE WITNESS: I don't remember.

18 BY MR. LULEJIAN:

19 Q. Well, last week when we talked about this, you got very
20 emotional, didn't you?

21 A. Yes.

22 Q. You felt very bad that you couldn't help your friend;
23 isn't that right?

24 A. I was just sad to hear this kind of thing happen.

25 Q. You read in the paper what the charges in Cambodia were,

1 didn't you?

2 A. Well, I don't really give 100 percent accountable on
3 what I read on the newspaper.

4 Q. You read in the paper that the defendant had been
5 arrested for debauchery in Cambodia, didn't you?

6 A. Yeah.

7 Q. You didn't help him?

8 A. No.

9 MR. GUNN: Objection. Irrelevant, Your Honor.

10 THE COURT: Overruled.

11 BY MR. LULEJIAN:

12 Q. In fact, I think you said last week you were too busy to
13 help him, didn't you?

14 A. Yes.

15 Q. But since his arrest, you've gotten involved in the
16 overall case in Cambodia, haven't you?

17 A. Not exactly because my work was very busy at the time.

18 Q. I think you said you launched an investigation into the
19 events that surrounded Mr. Pepe's arrest, didn't you?

20 A. Only when three days before I came to United States, I
21 just want to know the truth of what is happening, so I
22 launched the investigation on my own.

23 Q. So for the year and half to two years before coming to
24 trial, you did absolutely nothing?

25 A. No, nothing to do with that.

1 Q. This was purely to find out what was happening in this
2 case?

3 A. Three or five days before I came here, and I just took a
4 look on the report -- what's happening in the case.

5 Q. Well, you met with Special Agent Phillips back in March
6 of this year, didn't you?

7 A. Yes.

8 Q. Special Agent Philips asked you a number of questions
9 about the case involving Mr. Pepe and the mothers, didn't he?

10 A. I think he asked some questions, but I don't recall.

11 Q. You did absolutely nothing back in March of this year?

12 A. No.

13 Q. Your investigation has consisted of just getting some
14 reports and reading them, isn't right?

15 A. Yes.

16 Q. That's not all you did, is it?

17 A. I have my time outside the city. A lot of time I don't
18 have a whole lot of time to investigate or read the whole
19 thing.

20 Q. You did a lot more than just read the reports; isn't
21 that right?

22 A. I don't think so. All I did was just to remember what
23 we did and the distribution of gifts to the children. That's
24 all.

25 Q. You testified last week that you went and interviewed

1 several of the mothers, didn't you?

2 A. Yes, I did before I came here.

3 Q. So that --

4 A. Two days or three days before I came here.

5 Q. You interviewed Ly Kim Eng? That's the mother of
6 Kunthea?

7 A. Yes.

8 Q. You interviewed Koeung Lang -- that's the mother of
9 S.S.XXX and S.R.XXX -- didn't you?

10 A. Yes.

11 Q. And you also talked to one of the grandmothers, didn't
12 you?

13 A. Yes.

14 Q. What are you looking at there, sir?

15 A. The picture that I spoke to one of the mother of the
16 children.

17 Q. Where did you get that picture from?

18 A. My security took that picture.

19 Q. May I see that picture, sir?

20 MR. LULEJIAN: May I approach, Your Honor?

21 THE COURT: Yes.

22 BY MR. LULEJIAN:

23 Q. This is a photograph of you talking to Ly Kim Eng, isn't
24 it?

25 A. Yes.

1 Q. You're standing out in what looks like the country
2 interviewing her?

3 A. Yes.

4 Q. Ly Kim Eng was arrested by the Cambodian National Police
5 for selling her daughter to the defendant; isn't that right?

6 MR. GUNN: Objection. Move to strike. Hearsay.
7 Irrelevant.

8 THE COURT: Goes to his state of mind only.

9 You may answer that, sir.

10 Excuse me. Rephrase it so it's relevant as to the
11 time of the interview, the photograph.

12 MR. LULEJIAN: Yes, Your Honor.

13 BY MR. LULEJIAN:

14 Q. Ly Kim Eng was released from prison -- excuse me.

15 When did this interview take place, sir? I think
16 you said it was two to three days before you came to the
17 United States?

18 A. Yes.

19 Q. Your interview consisted of the events that led her to
20 prison; isn't that right?

21 A. Yes.

22 Q. The Cambodian National Police charged her back in June
23 of 2006 with selling her daughter; isn't that right?

24 MR. GUNN: Objection. Charges are irrelevant.

25 THE COURT: The only question is what this witness

1 knew at the time of the interview, not what may or may not
2 have happened.

3 BY MR. LULEJIAN:

4 Q. Did you know at the time of the interview that she had
5 been arrested for selling her daughter?

6 A. No. I have no idea what's happening. She never told
7 me.

8 Q. What did she tell you during her interview, sir?

9 A. She said that she have no idea. The police took her in
10 and throw her in jail.

11 Q. And we talked to Koeung Lang on --

12 Actually, do you have a picture of you talking to
13 Koeung Lang?

14 A. Yes.

15 Q. Can I see that as well, too, sir?

16 A. Who is Koeung Lang? Is that her in the picture named
17 Koeung Lang?

18 Q. Koeung Lang is the mother of S.S.XXX and S.R.XXX.

19 A. I'm not sure about the mother, and who was the -- who
20 was her kid.

21 Q. How about this: It was the other mother you just
22 testified about going to visit?

23 A. She is the mother of one kid, not two.

24 Q. You talked to one of the mothers that had two children,
25 though, didn't you?

1 A. No. I could not locate her, just the one with one kid.

2 Q. Now, you didn't talk to anybody else, did you?

3 A. No.

4 Q. So you only talked to the one mother as part of your
5 investigation?

6 A. Yes.

7 Q. You didn't go to Preysar prison and interview a woman by
8 the name of Basang?

9 A. No.

10 Q. Did you go to the Ministry of Justice and to speak to
11 Colonel Sun Ro?

12 A. I'm not sure. Can you rephrase that again?

13 Q. Certainly.

14 Did you -- I misspoke.

15 Did you go to Cambodia National Police and ask to
16 speak with any of the investigators?

17 A. Yeah. About three days before I came here, yes, I went
18 there.

19 Q. Who did you speak with?

20 A. I don't recall the name, but the commander that is in
21 charge of the investigation.

22 Q. That was Colonel Sun Ro?

23 A. Maybe.

24 Q. Did you talk to General Un Sokunthea?

25 A. Yeah. In the office of the National Police, but I don't

1 know the name.

2 Q. Did you talk to anybody at the Ministry of Justice?

3 A. No.

4 Q. You didn't approach anybody in the United States
5 Government, did you?

6 A. No.

7 Q. You didn't contact Gary Phillips, case agent?

8 A. No.

9 Q. You didn't go to the library and do research of
10 newspaper articles, did you?

11 A. No.

12 Q. You just pulled a business card out of your wallet.

13 What does that card say, sir?

14 A. The Assistant United States Attorney and
15 Mr. Gary Phillips business card.

16 Q. You didn't contact the United States Attorney's Office
17 and ask what it knew about this investigation, did you?

18 A. No.

19 Q. You didn't -- you didn't contact General Un Sokunthea to
20 see what he had to say, did you?

21 A. I'm not sure. Is that the name?

22 Q. General Un Sokunthea.

23 A. I don't recall.

24 Q. But you did approach somebody else, didn't you?

25 A. Only the defense attorneys' group that came to my

1 office.

2 Q. But you also spoke to an investigating judge in
3 Cambodia, didn't you?

4 A. Yes, three or four days before I came here.

5 Q. You met with investigating Judge Sao Meach?

6 A. He's the judge, yes.

7 Q. This is the judge who is currently sitting in the
8 Cambodian courts?

9 A. Yes, in Phnom Penh City.

10 Q. In fact, this judge had an active role in the
11 investigation surrounding the defendant and the mothers,
12 didn't he?

13 A. Yes.

14 Q. In Cambodia, the investigating judge is the one who
15 gathers the evidence, doesn't he?

16 A. In Cambodia, the investigating judge is different from
17 the judge that is ruling on the case.

18 Q. But the investigating judge is a jurist, supposed to be
19 neutral; right?

20 A. Yes.

21 Q. What happens, sir, is the investigating judge gathers
22 all of the evidence and then presents that to the trial judge
23 for trial; isn't that right?

24 A. That is correct.

25 Q. Judge Sao Meach had intimate knowledge of the facts of

1 this case, didn't he?

2 A. Yes.

3 Q. In fact, he sat in on a number of the interviews of
4 witnesses, didn't he?

5 A. I do not know. It's the judge's job.

6 Q. Let me show you something.

7 MR. GUNN: Your Honor, I object. This is outside
8 the scope. Rule 403.

9 THE COURT: Let's have a side bar.

10 (Sidebar conference)

11 THE COURT: Mr. Lulejian, for somebody who is going
12 to be done with five more minutes on Friday, this is getting
13 really, really long and boring. I don't want to cut you off
14 if it's relevant. So far it hasn't been relevant. It's bias
15 and standard cross-examination when somebody has done their
16 investigation before he comes to testify. Do you know where
17 you're going?

18 MR. LULEJIAN: I know exactly where I'm going,
19 Your Honor. Judge Meach was the judge. We have the Court
20 documents to show that he stamped and approved these
21 documents.

22 THE COURT: Who did?

23 MR. LULEJIAN: Judge Sao Meach.

24 THE COURT: So what? So what?

25 MR. LULEJIAN: It goes to the fact that he has

1 knowledge of the case. It's an official court document.

2 THE COURT: Who has knowledge of the case?

3 MR. LULEJIAN: Judge Meach.

4 THE COURT: There's no question about that. Who
5 cares.

6 MR. LULEJIAN: Okay.

7 THE COURT: Where is it going with this witness?

8 MR. LULEJIAN: Going with him -- this is the judge
9 who was present for the interview of the mother when the
10 complaint -- it goes to the heart of the bias.

11 THE COURT: We already established that he went to
12 the judge. He talked to the judge. What else?

13 MR. LULEJIAN: I'll move along then.

14 (Sidebar conference concluded)

15 BY MR. LULEJIAN:

16 Q. When you went to go meet with Judge Sao Meach, you
17 talked to him about the case involving the mothers, didn't
18 you?

19 A. Yes.

20 Q. In fact, you advocated for the mothers, didn't you?

21 A. Well, I just went there to gather information at the
22 time the mother already released from prison.

23 Q. The judge provided you that information?

24 A. Yes.

25 Q. Judges in Cambodia are appointed by the political party,

1 aren't they?

2 A. In the present time, yes.

3 Q. They serve at the pleasure of the party, don't they?

4 A. Well, by law, you have nothing to do with the party.

5 Q. But there are certain judges that are appointed by the
6 Funcinpec party, and certain judges that are appointed by the
7 Cambodian People's party, aren't they?

8 A. Yes.

9 Q. But the reality is that those judges are beholden to the
10 party that appoints them, aren't they?

11 A. By law, the judge has to be neutral.

12 Q. As a member -- as a senior member of the Funcinpec
13 party, you approached this judge and got information, didn't
14 you?

15 A. It's not the party that involves whether I went there
16 because he's in Funcinpec party. I'm the assemblyman. I did
17 that for the sake of the people that vote for me.

18 Q. You're able to get access to the judge because you're a
19 member of the National Assembly?

20 A. Yes.

21 Q. Now, in addition to talking to the judge, you told the
22 mothers that you were going to sue the non-governmental
23 organizations on their behalf, didn't you?

24 A. The mother of the kid informed me about the situation.
25 All I did -- I said, if you unhappy, you file a formal

1 complaint, and the one that -- I'm the one that will look
2 into it.

3 Q. In fact, you told Suos Vansak, an investigator from the
4 embassy, that you were personally going to bring a suit on
5 behalf of the mothers, didn't you?

6 A. I just said that this procedure is incorrect, according
7 to procedure in my government, and I'm representing the
8 people.

9 Q. The procedure that was wrong was that the NGO's didn't
10 check with you before they took the children out of the
11 country; isn't that right?

12 A. Not me. The mother.

13 Q. In fact, the NGO's have custody of the children, don't
14 they?

15 A. Yes.

16 Q. So the mother has no legal rights to what happens to
17 that child right now, does she?

18 MR. GUNN: Objection. Irrelevant. Rule 403.
19 Beyond the scope.

20 THE COURT: Based on his state of mind. His
21 belief.

22 THE WITNESS: Yes. Because the children is only
23 13 years old, they should not legally control them without
24 their parents' knowledge.

25 BY MR. LULEJIAN:

1 Q. You understood that the NGO's had legal responsibility
2 for the children; isn't that right?

3 A. That I'm not clear, but I'm sure about the mother and
4 child.

5 Q. And the NGO's all have formal relationships and memos of
6 understanding with the Cambodian government, don't they?

7 A. That I'm not sure.

8 Q. Those NGO's have various memorandums or project
9 agreements with different ministries in Cambodia?

10 A. Yes. According to the rule, they have to.

11 Q. Those NGO's have no responsibility to contact a member
12 of the National Assembly before they act, do they?

13 A. This -- the assembly has to know what is going on also
14 because I can launch my own investigation because I'm
15 representing the people.

16 Q. But if an NGO has -- let me rephrase that.

17 The National Assembly is part of the Cambodian
18 government; is that right?

19 A. You have to have a different judicial -- the branch of
20 the National Assembly and different from the senate and
21 different from the judge and the police. Legislative branch,
22 judiciary branch, and legislative branch, and executive
23 branch. So they all different. They all separate because
24 they are different from one another.

25 Q. So the NGO's have to register with the Cambodian

1 government in order to operate; right?

2 A. Yes.

3 Q. The Socrates Foundation, it wasn't registered with the
4 Cambodian government?

5 THE COURT: We've done this, Mr. Lulejian. Don't
6 repeat.

7 MR. LULEJIAN: I'm sorry. One moment, please,
8 Your Honor.

9 (Brief pause in the proceedings)

10 BY MR. LULEJIAN:

11 Q. You are a member of the legislative branch, sir?

12 A. Yes.

13 MR. LULEJIAN: One moment please, Your Honor.

14 (Brief pause in the proceedings)

15 MR. LULEJIAN: I have no further questions,
16 Your Honor.

17 THE COURT: Redirect?

18 **REDIRECT EXAMINATION**

19 BY MR. GUNN:

20 Q. Just to be clear, Mr. Khieu, these inquiries you made
21 were just a few days before you came here to the
22 United States for this case?

23 A. Yes.

24 Q. The mothers had already been released at that point?

25 A. Yes.

1 Q. So the case in Cambodia was already over?

2 A. Yes.

3 MR. GUNN: No further questions.

4 THE COURT: Mr. Lulejian?

5 MR. LULEJIAN: Nothing else, Your Honor.

6 THE COURT: Thank you very much, sir. You're
7 excused.

8 Does the defense have another witness?

9 MR. GUNN: Yes, Your Honor. We call Sin Samna.

10 Your Honor, I'm going to need some exhibits that I
11 think are physical exhibits. 1205, 1206, 1209, and 1215. I
12 won't get to them immediately, Your Honor, but I'll get to
13 them in about ten minutes.

14 We do need the interpreter, Your Honor.

15 **Sin Samna, Defense witness, sworn**

16 THE COURT: Please have a seat.

17 THE CLERK: Please state your full name and spell
18 your last name for the record.

19 THE WITNESS: Sin Samna, S-I-N, S-A-M-N-N-A.

20 THE COURT: You may proceed.

21 **DIRECT EXAMINATION**

22 BY MR. GUNN:

23 Q. Ms. Sin, what country do you live in?

24 A. Cambodia.

25 Q. Have you lived in Cambodia all your life?

1 A. Yes.

2 Q. What part of Cambodia are you living in now?

3 A. (Khmer language spoken.)

4 Q. Is that part of Phnom Penh?

5 A. Yes.

6 Q. How are you employed?

7 A. I'm in charge of the Royal University of Agriculture.

8 It's one of the ministries.

9 Q. Do you know Michael Pepe?

10 A. Yes, I do.

11 Q. How do you know him?

12 A. He rented my home.

13 Q. He rented the home you lived in or another home that you
14 owned?

15 A. The other home that I have.

16 Q. When did you meet him?

17 A. First I met him in 2004 when he first approached me to
18 rent my house.

19 Q. Could you look around the courtroom and tell us whether
20 you see him in the courtroom here today?

21 A. Yes, I do.

22 Q. Would you just point him out for us?

23 THE COURT: Does anybody have a question that this
24 witness identified Mr. Pepe?

25 MS. DONAHUE: No, Your Honor.

1 THE COURT: Let's just stipulate.

2 MR. GUNN: Thank you.

3 BY MR. GUNN:

4 Q. Did there come a time when Mr. Pepe spoke to you about
5 distributing some school supplies?

6 A. Yes.

7 Q. About how many months was that before Mr. Pepe was
8 arrested?

9 A. I don't recall exactly, but I think at least about a
10 year before then.

11 Q. Can you describe the conversation and how the subject of
12 distributing school supplies came up?

13 A. He wanted to give some gift to the children and to the
14 people in the very far away -- in the rural area.

15 Q. Did you agree to participate in that distribution and
16 that project?

17 A. Yes.

18 Q. What did Mr. Pepe do then?

19 A. He brought me some gift to me. We both went to Ba Phnom
20 in Prey Veng Province to distribute those gifts.

21 Q. Did he tell you where he wanted to distribute them or
22 did he let you suggest a place?

23 A. He asked me where. I suggested to him.

24 Q. Where's was the place you suggested?

25 A. It's the town named Ba Phnom in Prey Veng Province.

1 Q. How far is that away from Phnom Penh?

2 A. It's about 130 kilometers from Phnom Penh.

3 Q. Why did you choose that location or suggest that
4 location?

5 A. I used to live in that town, and it's a lot of children
6 and unfortunate children, very poor.

7 Q. Did Mr. Pepe say anything about wanting you to choose
8 some place closer to Phnom Penh?

9 A. No, he did not say that.

10 Q. Did Mr. Pepe go with you when the school supplies were
11 distributed?

12 A. Yes, he did. He went with me.

13 Q. Who else went with you and him?

14 A. I, my husband, Mr. Pepe, and his wife Chan Ry.

15 Q. On how many occasions did all of you go?

16 A. Once.

17 Q. What type of items were in the school supplies that were
18 distributed?

19 A. It's a plastic bag. Contains some book and pencil,
20 erasers, pencil sharpener, also a little blackboard.

21 Q. How many sets of these were distributed?

22 A. Four- or 500 packages.

23 Q. Did it seem like the materials were useful and
24 appreciated by the schools and the students?

25 A. Yes.

1 Q. I'd like to move on to another topic.

2 MR. GUNN: Your Honor, if I could have Government's
3 Exhibits 1205, 1206, 1209, and 1215 before the witness.

4 THE COURT: Could someone do that, please.

5 MR. GUNN: Maybe I can look at them very quickly.

6 Your Honor, if they could be placed before Ms. Sin.

7 THE COURT: Yes.

8 BY MR. GUNN:

9 Q. Ms. Sin, I'm having four exhibits that are placed before
10 you. They have little yellow tags on them with the Numbers
11 1205, 1206, 1209, and 1215.

12 Do you recognize any of those?

13 THE COURT: Why don't you ask her one by one so we
14 have a clear record.

15 MR. GUNN: First of all, if I could have the
16 interpreter show her the one marked 1205

17 THE WITNESS: Yes.

18 BY MR. GUNN:

19 Q. Ms. Sin, do you recognize that?

20 A. Yes, that's mine.

21 Q. You said it's yours?

22 A. Yes.

23 Q. Are they sheets? Bed clothes?

24 A. Yes, it's the -- like a bed sheet.

25 Q. You said they're yours. What -- where were they or

1 what -- where were they on the day Mr. Pepe was arrested, if
2 you know?

3 A. It's a little cover for the bed mattress.

4 Q. Are those sheets that went with the house when you
5 rented it out?

6 A. Yes.

7 Q. Would you look at Exhibit 1206. I'm not sure about that
8 one, but do you recognize it?

9 A. No, I don't know.

10 Q. Okay.

11 Would you look at 1209.

12 A. I don't think it's mine either.

13 Q. What about 1215?

14 A. Yes, this is mine.

15 Q. All right. So 1215 is also yours?

16 A. Yes.

17 Q. Is it also something that was left with the house or
18 went with the house when it was rented out?

19 A. Yes.

20 MR. GUNN: No further questions, Your Honor.

21 THE COURT: Cross-examination?

22 MR. LULEJIAN: Yes, Your Honor.

23 **CROSS-EXAMINATION**

24 BY MR. LULEJIAN:

25 Q. Good morning, Ms. Sin.

1 Ms. Sin, on June the 17th, 2006, you were at your
2 house when the Cambodian National Police executed a search
3 warrant; is that right?

4 MR. GUNN: Your Honor, I object. Outside the
5 scope.

6 THE COURT: Are you going to be able to get there
7 quickly, Mr. Lulejian?

8 MR. LULEJIAN: Yes, Your Honor. Quickly.

9 THE WITNESS: Yes.

10 BY MR. LULEJIAN:

11 Q. I'm going to show you what has been marked as
12 Government's Exhibit 2114.

13 MR. LULEJIAN: May I approach, Your Honor?

14 THE COURT: Yes.

15 BY MR. LULEJIAN:

16 Q. Do you recognize this photograph?

17 A. Yes, that's my picture.

18 Q. That's you on the day of the search?

19 A. Yes.

20 MR. LULEJIAN: Your Honor, the Government moves
21 Exhibit 2114 into evidence.

22 THE COURT: Any objection?

23 MR. GUNN: No, other than outside the scope.

24 THE COURT: Admitted.

25 **(Exhibit 2114 received)**

1 MR. LULEJIAN: May I publish, Your Honor?

2 THE COURT: Yes.

3 BY MR. LULEJIAN:

4 Q. You were at the house the following day on the 18th of
5 June, weren't you?

6 MR. GUNN: Objection. Outside the scope,
7 Your Honor.

8 THE COURT: Mr. Lulejian, is this within the scope?

9 MR. LULEJIAN: Yes, Your Honor.

10 THE COURT: All right. Tie it up quickly.

11 THE WITNESS: I don't remember that I was there on
12 that day.

13 BY MR. LULEJIAN:

14 Q. I'm going to show you a photograph that is identified as
15 Government's Exhibit 2115 for identification.

16 MR. LULEJIAN: May I approach, Your Honor?

17 THE COURT: Yes.

18 BY MR. LULEJIAN:

19 Q. Do you recognize that photograph, Ms. Sin?

20 A. It's not clear.

21 Q. The person who is sitting in the table, is that you?

22 A. It's not clear.

23 Q. Is that your daughter sitting at the table as well?

24 A. Yes. I think that's my daughter, but the other picture
25 is not clear.

1 MR. LULEJIAN: Your Honor, I think this has been
2 admitted into evidence as Defense Exhibit 510.

3 THE COURT: All right.

4 MR. LULEJIAN: I ask to publish them.

5 BY MR. LULEJIAN:

6 Q. Ms. Sin, I'm going to zoom in to the people sitting at
7 the table.

8 Is that you sitting at the table?

9 A. Yes.

10 Q. On that day, you spoke with Special Agent Phillips; is
11 that correct?

12 A. I don't know who Phillips was.

13 Q. Special Agent Phillips is the gentleman sitting here at
14 the end of the table?

15 A. I don't think I remember him.

16 Q. Do you remember speaking to an agent about Mr. Pepe's
17 school supply program on that day?

18 A. Yes.

19 Q. And you said that Mr. Pepe ran a children's organization
20 Socrates Foundation, didn't you?

21 A. Yes.

22 Q. You also said he has a school in Kilo 11 for victims of
23 former sex crimes and sexual abuse, didn't you?

24 MR. GUNN: Objection. No foundation. Personal
25 knowledge, Your Honor.

1 THE COURT: Overruled.

2 THE WITNESS: I do not know anything about the
3 Kilometer 11.

4 BY MR. LULEJIAN:

5 Q. You said the defendant routinely provides young children
6 with school supplies in Kilo 11 and other provinces; isn't
7 that right?

8 MR. GUNN: Objection. No foundation. Personal
9 knowledge, Your Honor.

10 THE COURT: Well, he's just asking her what she
11 said. Doesn't matter whether she had any knowledge or not.

12 MR. GUNN: Irrelevant as to whether she said it,
13 Your Honor.

14 THE COURT: Mr. Lulejian?

15 MR. LULEJIAN: I think it certainly goes to
16 relevancy. The defendant opened the door to the school
17 supply program. It goes to the heart of it.

18 THE COURT: You can certainly inquire about the
19 school supply program and her knowledge of it.

20 MR. LULEJIAN: Okay.

21 BY MR. LULEJIAN:

22 Q. Did you tell the agent the defendant provides school
23 supplies in the --

24 THE COURT: Mr. Lulejian, what she told the agents
25 is not yet relevant. What she knows as she sits here today,

1 you may certainly inquire of that.

2 MR. LULEJIAN: Got it.

3 BY MR. LULEJIAN:

4 Q. Ms. Sin, you are aware -- are you aware that the
5 defendant provided school supplies to Kilo 11 in the
6 provinces?

7 MR. GUNN: No foundation. Personal knowledge.

8 THE COURT: He's asking her if she's aware.

9 THE WITNESS: That I don't know.

10 BY MR. LULEJIAN:

11 Q. As you sit here today, are you aware that when the
12 defendant would give school supplies to the children and they
13 would see him, that they were very happy?

14 A. Yes, they were happy.

15 Q. The defendant was happy when he saw the children too,
16 wasn't he?

17 A. Yes.

18 Q. In fact, the defendant gave gifts to the children
19 including candy; isn't that right?

20 A. Yes.

21 Q. He would give them money, as well, as much as 1000 to
22 2000 Reil; is that right?

23 A. That -- I don't know about the money.

24 Q. Now, as his landlord, you're responsible for collecting
25 the rent, weren't you?

1 A. Yes.

2 Q. The rent was originally \$400 month?

3 A. No. 800.

4 Q. It was 800 a month in June of 2006, wasn't it?

5 MR. GUNN: Objection. Outside the scope,
6 Your Honor.

7 THE COURT: Overruled.

8 THE WITNESS: \$800 from the beginning.

9 BY MR. LULEJIAN:

10 Q. At some point in time you refurnished the house, didn't
11 you?

12 A. Yes. Add on.

13 Q. I'm going to show you a picture that's been admitted
14 into evidence as Government's Exhibit Number 1332. It's been
15 admitted.

16 This is a leather couch, wasn't it, that was in the
17 house?

18 A. Yes.

19 Q. This was one of the items that you replaced?

20 A. Yes.

21 Q. On June 17th -- when did you replace them?

22 A. Well, it was there in the beginning. It's two of them.
23 One is wood. One is leather like.

24 Q. At the time of the day of the arrest, that couch wasn't
25 there, was it?

1 A. It was there.

2 Q. Now, when you went to collect the rent, you contacted
3 the defendant before you went over; isn't that right?

4 A. Yes.

5 Q. In fact, you never went over to the house unannounced,
6 did you?

7 A. Well, it's a clause in the lease agreement that we both
8 agreed to let one another know ahead of time before we made
9 any contact or visit.

10 Q. So you never went to the house unannounced?

11 A. That is correct.

12 Q. Each time you went to pick up the rent, you negotiated a
13 time with the defendant of when to come and meet him?

14 A. Yes.

15 MR. GUNN: Objection. Outside the scope,
16 Your Honor.

17 THE COURT: It's getting to look like it's outside
18 the scope. Are you going to be done soon, Mr. Lulejian, or
19 should we take our break?

20 MR. LULEJIAN: Why don't we take our break right
21 now.

22 THE COURT: Ladies and gentlemen, please don't talk
23 about the case or discuss the case until it has finally been
24 submitted to you.

25 (Open court - jury not present)

1 (Recess)

2 THE COURT: Everyone ready?

3 MR. GUNN: We're going to get the witness,
4 Your Honor.

5 THE COURT: Thank you. Let's bring the jury in.

6 (Open court - jury present)

7 THE COURT: Everyone is back. The witness is back
8 on the stand. Both the witness and interpreter are still
9 under oath.

10 Mr. Lulejian.

11 MR. LULEJIAN: Thank you, Your Honor.

12 BY MR. LULEJIAN:

13 Q. Ms. Sin, before May of 2006, you never saw any children
14 at the house when you came to visit, did you?

15 MR. GUNN: Yes, Your Honor. Outside the scope.

16 THE COURT: It seems outside the scope,
17 Mr. Lulejian.

18 BY MR. LULEJIAN:

19 Q. In late May to June of 2006, Mr. Pepe requested that you
20 make an appointment with him at least two days prior to
21 coming over; isn't that right?

22 MR. GUNN: Objection, Your Honor. Outside the
23 scope.

24 THE COURT: It seems outside the scope,
25 Mr. Lulejian.

1 MR. LULEJIAN: Nothing further, Your Honor.

2 THE COURT: Mr. Gunn?

3 MR. GUNN: Nothing, Your Honor.

4 THE COURT: Thank you, ma'am. You're excused.

5 Does the defense have another witness?

6 MR. BROWN: Yes, Your Honor. The defense calls
7 Seng Lida.

8 THE CLERK: I'm sorry. Are you a minor?

9 THE COURT: How old are you?

10 MS. SENG: I'm 20 years old.

11 **Seng Lida, Defense Witness, sworn**

12 THE WITNESS: Seng Lida, S-E-N-G, L-I-D-A.

13 THE COURT: You may proceed.

14 MR. GUNN: Thank you very much, Your Honor.

15 **DIRECT EXAMINATION**

16 BY MR. BROWN:

17 Q. Good morning, Ms. Seng. What country are you from?

18 A. Cambodia.

19 Q. How old are you?

20 A. 20 years old.

21 Q. What year were you born?

22 A. 1988.

23 Q. And are you in college now or do you work?

24 A. I'm in school. I'm studying English.

25 Q. What school do you go to?

1 A. Panha Sas University.

2 Q. Do you also work?

3 A. Yes.

4 Q. Where do you work?

5 A. Riverside Restaurant.

6 Q. Ms. Seng, do you know a person named Michael Pepe?

7 A. Yes, I do.

8 Q. How do you know Michael Pepe?

9 A. Because he's -- he's my aunt's husband.

10 Q. Who is your aunt?

11 A. Chan Ry.

12 Q. Do you know how old Chan Ry is?

13 A. I think 25.

14 Q. Would you from time to time visit your aunt at

15 Mr. Pepe's house?

16 A. Yes.

17 Q. Would you on occasion help your aunt and Mr. Pepe help

18 distribute school supplies?

19 A. Yes.

20 Q. Could you describe just briefly for the jury what you

21 did when you helped distribute school supplies?

22 A. Just prepare the gift package and also went along to

23 distribute that.

24 Q. I'd like to show you a couple of photos, Ms. Seng. If

25 you could identify a few pictures.

1 MR. BROWN: Your Honor, I'd like to publish a few
2 photos from Defense Exhibit 380. I have them in computer
3 form, if it pleases the Court. I think it would be a little
4 easier.

5 THE COURT: Sure.

6 BY MR. BROWN:

7 Q. Ms. Seng, do you see the photo there?

8 A. Yes.

9 Q. Do you know who is in that photo?

10 A. Myself, Chan Ry, Michael, and Jason. Also the people
11 that in the -- it's the handicap children in there.

12 Q. So you went with --

13 MR. BROWN: This, for the record, is defense
14 Exhibit 380.

15 BY MR. BROWN:

16 Q. You went with Michael and your aunt to help distribute
17 school supplies to the handicap children?

18 A. Yes.

19 Q. Do you remember when that was, Ms. Seng?

20 A. It's in 2006. I think it's a month before Michael was
21 arrested.

22 Q. Is that you in the front of that picture with the little
23 boy?

24 A. Yes.

25 Q. Is that Michael in the middle of the picture?

1 A. Yes.

2 Q. Is that your aunt Chan Ry sitting behind Michael?

3 A. Yes.

4 Q. You said that she's 25?

5 A. Yes, around there.

6 Q. Ms. Seng, do you see yourself in that photograph?

7 A. Yes.

8 Q. Is that also at the disabled child's center? Was it a
9 school or a church, if you know?

10 A. I'm not sure whether church or school, but they live
11 there.

12 Q. Who else is in that photo, if you know?

13 A. That picture?

14 Q. Yes.

15 A. My other aunt with her two children.

16 Q. When you say, your other aunt, is that the Chan Ry's
17 sister?

18 A. Yes.

19 Q. She's the person who is married to Sander Montero?

20 A. Yes.

21 MR. BROWN: For the record, Your Honor, I've shown
22 photo Number 20, Number 28, and this is 42 from Defense
23 Exhibit 380.

24 THE COURT: Thank you.

25 ///

1 BY MR. BROWN:

2 Q. Ms. Seng, is that another picture from the day you went
3 to distribute school supplies?

4 A. Yes.

5 Q. How long were you there? Did you go there as a family?

6 A. Yes. I went there with Michael.

7 Q. How long were you there, if you know?

8 A. Two or three hours.

9 Q. Ms. Seng, you're 20 years old; right?

10 A. Yes.

11 Q. You go to school in Phnom Penh?

12 A. Yes.

13 Q. You also work in Phnom Penh?

14 A. Yes.

15 Q. So you're familiar with kind of the girls -- the
16 students from your generation?

17 A. Yes.

18 Q. Is it a traditional part of Cambodian culture for
19 daughters to do everything that their mothers tell them to
20 do, based on your experience?

21 A. Well, I don't know the old-fashioned way, but my
22 generation, especially myself, if my parent tell me to do
23 something that I think is what I don't like, I will not do
24 it.

25 MR. BROWN: Your Honor, I have no further

1 questions.

2 THE COURT: Cross-examination?

3 MR. LULEJIAN: Yes, Your Honor.

4 **CROSS-EXAMINATION**

5 BY MR. LULEJIAN:

6 Q. You testified on direct, ma'am, that you had visited
7 your sister and brother-in-law at their house in Phnom Penh?

8 A. Yes, I visit their house.

9 Q. When you visited the house, did you stay there?

10 A. Yes, I do.

11 Q. Did you spend the night there?

12 A. Yes.

13 Q. What room did you sleep in?

14 A. Sometime downstairs. Sometime upstairs.

15 Q. Did you sleep in the bedroom downstairs?

16 A. Yes.

17 Q. When you slept upstairs, where did you sleep upstairs?

18 A. In the middle room.

19 Q. Was there a bed in that room?

20 A. Yes.

21 Q. Is that the room that is next to the master bedroom?

22 A. What do you mean, "master bedroom"?

23 Q. Did you sleep in the room next door to the room the
24 defendant slept in?

25 A. Close.

1 Q. Did you ever go in the defendant's bedroom?

2 A. Yes, sometime.

3 Q. When were you at the house?

4 A. 2004.

5 MR. LULEJIAN: No further questions.

6 THE COURT: Redirect?

7 **REDIRECT EXAMINATION**

8 BY MR. BROWN:

9 Q. Ms. Seng, 2004 was not the only year you were at the
10 house; is that right?

11 A. No. 2004 through 2006.

12 Q. You would visit from time to time in that time frame?

13 A. Yes.

14 MR. BROWN: No further questions.

15 THE COURT: Mr. Lulejian?

16 MR. LULEJIAN: No further questions, Your Honor.

17 THE COURT: Thank you, ma'am. You're excused.

18 Does the defense have another witness?

19 MR. GUNN: At this time we would read a stipulation
20 into evidence.

21 THE COURT: You may do that.

22 MR. GUNN: One of the things I'm able to do.

23 THE COURT: All right.

24 MR. GUNN: Ladies and Gentlemen, this is a
25 stipulation between the parties.

1 It is hereby stipulated by and between plaintiff
2 United States of America through its counsel of record
3 Assistant United States Attorney Patricia Donahue and
4 Assistant United States Attorney John Lulejian and defendant
5 Michael Pepe, through his counsel of record, Deputy Federal
6 Public Defender Charles Brown and Deputy Federal Public
7 Defender Carlton F. Gunn as follows:

8 One, Keith Williams, Federal Public Defender Chief
9 Investigator, shall be deemed to be recalled as a witness and
10 testified as follows: The set of photographs identified as
11 Defense Exhibit 311 is a complete set of all of the
12 photographs Mr. Williams took of Mr. Pepe on January 4, 2008.

13 And B, the set of photographs identified as Defense
14 Exhibit 312, is a set of photographs Mr. Williams took of
15 Mr. Pepe on June 13, 2007.

16 Two, defense Exhibit 123 is an accurate translation
17 of the statement made by Basang to an investigating judge in
18 Cambodian court which was identified as Defense Exhibit 122
19 during the defense cross-examination in the deposition of
20 Basang.

21 Defense Exhibit 122 and Defense Exhibit 123 are
22 admitted into evidence.

23 Your Honor, I'd offer 122, 123, 311, 312 into
24 evidence.

25 MR. LULEJIAN: No objection, Your Honor.

1 THE COURT: Those would be admitted.

2 **(Defense Exhibits 122-123 & 311-312 received)**

3 MR. GUNN: Your Honor, would it be allowed to
4 publish for the jury the translation of the Basang statement,
5 Defense Exhibit 123?

6 THE COURT: I don't think we need to do that.
7 They'll have it with them in the jury room.

8 MR. GUNN: All right, Your Honor.

9 Then our next witness or evidence would be the
10 deposition of Koeung Lang, which we have on videotape.

11 With the Court's permission, we'll play that from
12 here.

13 THE COURT: Any way that works.

14 MR. GUNN: There will be one point where there was
15 a redaction a word short that we'll stop and read into the
16 record.

17 THE COURT: Because we have a new court reporter,
18 the court reporter is not transcribing the deposition itself.
19 However, if counsel gets up and either shows an exhibit or
20 reads something into the record, the court reporter will
21 record that.

22 MR. GUNN: This one was prepared by the Government.
23 It will play through without the stops.

24 THE COURT: That will be good.

25 **Videotaped Deposition of Koeung Lang, Defense Witness**

1 (Whereupon a videotaped deposition of Koeung Lang
2 was played in open court.)

3 MR. GUNN: Your Honor, may I consult with counsel.

4 THE COURT: Yes.

5 MR. GUNN: Your Honor, for the record, the answer
6 "no" to that last question should not have been redacted.
7 The parties stipulate that the answer to that last question
8 was "no."

9 THE COURT: Thank you.

10 (Whereupon the videotaped deposition of Koeung Lang
11 was resumed.)

12 MR. GUNN: Your Honor, if I could consult with
13 counsel again. There was a redaction of an answer there that
14 should have not been redacted in response to the question,
15 "Did they act unhappy or sad or upset in any way?" The
16 witness answered, "No."

17 THE COURT: All right. Thank you.

18 MR. GUNN: Thank you.

19 (Whereupon videotaped deposition of Koeung Lang was
20 resumed.)

21 THE COURT: Could you pause that. We're going to
22 take our 15-minute break.

23 Ladies and Gentlemen, please don't talk about the
24 case or form any opinions about the case until it is finally
25 submitted to you.

1 (Recess)

2 THE COURT: Mr. Gunn.

3 MR. GUNN: Yes, Your Honor. So the record is
4 complete, since parts of the DVD's of the interviews for
5 T.C.XXX and I.T. and K.S.X were played for the jury, we
6 figured those should be marked as exhibits. We marked them
7 as Exhibit 174 for T.C.XXX; 175 for I.T.; and 176 for K.S.X.
8 If I could approach the clerk and provide those.

9 THE COURT: You may.

10 MR. GUNN: They would only be in evidence to the
11 extent that excerpts were played for the jury.

12 MS. DONAHUE: May I just inquire. So are these
13 Exhibits 174, 175, 176 excerpts?

14 MR. GUNN: No. Complete DVD's. They don't go back
15 to the jury anyway. If the jury wants to hear DVD's or
16 tapes, they have to come into open court to view them anyway.

17 THE COURT: I think that's correct, but in any
18 event, in this case, we won't be sending them back. If
19 somebody wants to see or hear anything, we'll discuss it at
20 that time.

21 MR. GUNN: For our position, that will be true of
22 all tapes or videotapes --

23 THE COURT: Thank you.

24 MR. GUNN: -- even if they're excerpts.

25 THE COURT: Are we otherwise ready?

1 MR. GUNN: Yes, Your Honor.

2 MS. DONAHUE: Yes, Your Honor.

3 (Open court - jury present)

4 THE COURT: Everyone is present. You may continue
5 playing the deposition.

6 (Whereupon the videotaped deposition of Koeung Lang
7 was resumed.)

8 MR. LULEJIAN: The Government wishes to publish
9 1002.

10 THE COURT: You may. Thank you.

11 MR. LULEJIAN: Thank you, Your Honor.

12 (Videotaped deposition resumed)

13 MR. LULEJIAN: May we publish 1003, Your Honor?

14 THE COURT: You may.

15 (Videotaped deposition resumed)

16 MR. LULEJIAN: May we publish 1025, Your Honor?

17 THE COURT: You may.

18 (Videotaped deposition resumed)

19 MR. LULEJIAN: Your Honor, the question read, "You
20 received money from the defendant after your children moved
21 into his house." Ms. Lang's answer was cut off. The answer
22 was, "Yes."

23 THE COURT: Thank you.

24 (Videotape deposition resumed)

25 MR. LULEJIAN: May we publish 1023?

1 THE COURT: You may. Why don't we get the answer
2 to that question and then take a break.

3 (Videotaped deposition resumed)

4 THE COURT: Ladies and gentlemen, don't talk about
5 the case or form or express any opinions about the case until
6 it is finally submitted to you.

7 (Recess)

8 THE COURT: We're ready?

9 (Open court - jury present)

10 THE COURT: Everyone is back. You may continue
11 with the deposition.

12 (Videotaped deposition resumed)

13 MR. LULEJIAN: Your Honor, may we publish 1025?

14 THE COURT: You may.

15 (Videotaped deposition resumed)

16 MR. LULEJIAN: Can we publish 1026, Your Honor?

17 THE COURT: You may.

18 (Videotape deposition resumed)

19 MR. LULEJIAN: May we publish 1024?

20 THE COURT: Yes.

21 (Videotaped deposition resumed)

22 MR. LULEJIAN: Your Honor, can we publish 1015?

23 THE COURT: You may.

24 (Videotaped deposition resumed)

25 MR. GUNN: Your Honor, there was a part -- if I

1 could just confer with counsel. The answer got cut off.

2 "Whatever he said, I would not understand. I didn't pay
3 attention. I was just standing there and cried and cried."

4 THE COURT: Thank you.

5 (Videotape deposition resumed)

6 MR. LULEJIAN: May we publish 1027, Your Honor?

7 THE COURT: You may.

8 (Videotaped deposition resumed)

9 MR. GUNN: Your Honor, there was another sentence
10 cut off. If we can read into the record the complete answer.

11 MR. LULEJIAN: "If there is any way I could get my
12 kids back" was the end of the sentence.

13 THE COURT: Thank you.

14 (Videotaped deposition)

15 MR. LULEJIAN: May we publish 2004, Your Honor?

16 THE COURT: You may.

17 (Videotaped deposition resumed)

18 MR. GUNN: Your Honor, I think it's good to stop at
19 this section. The section just ended. The next section is
20 about a page long. This is probably about a sensible place.

21 THE COURT: Ladies and gentleman, don't form or
22 express any opinions. We are going to get the case to you
23 for your deliberations sometime this week. You may want to
24 start thinking about what you will want your schedule to be,
25 and then you won't need me to be sitting on the bench waiting

1 for you. You can keep the same schedule from 8:00 to 2:00.
2 If you want to take a lunch break and just go longer in the
3 day, we'll leave that to you. So long as we have you here at
4 least six hours so we can truthfully tell your employers that
5 you have been working here with us, to the extent you have
6 employers to report to. You can be thinking about that.
7 That will be the first question I ask you tomorrow.

8 You're ordered to return tomorrow at 8:00 a.m.
9 You're ordered to have a good evening.

10 (Open court - jury not present)

11 THE COURT: You may be seated.

12 How much longer do we have with the deposition?

13 MR. GUNN: Your Honor, it's -- timewise -- page
14 wise we're on Page 75. It goes up through Page 87. Just
15 barely 87. So percentage wise, if the redactions are
16 proportional -- I'm not sure whether they are or not, we're
17 about, 6/7ths of the way through. It sounds like that means
18 another half hour to 45 minutes, but depends on how fast the
19 witness is talking.

20 MR. LULEJIAN: There's a lot of redactions in this
21 section. I think it will be shorter.

22 MR. GUNN: Could be.

23 THE COURT: Is that your last witness?

24 MR. GUNN: Yes. We rest.

25 THE COURT: What does the Government have planned

1 for tomorrow?

2 MS. DONAHUE: For rebuttal, as I have already told
3 the defense, we are not going to call the expert witness that
4 we had noticed. Our rebuttal are the tapes of the
5 defendant's conversations from the Metropolitan Detention
6 Center. We provided transcripts to the defense this morning.
7 They asked for an additional portion. We have agreed to put
8 that portion in as well. We'll make those excerpts tonight.

9 THE COURT: There is no disputes I need to resolve?

10 MS. DONAHUE: There are no disputes regarding MDC
11 tapes the Court needs to resolve. I think their total is
12 40 minutes, maybe half an hour. It's short. They're like
13 three short segments. It shouldn't take much more than a
14 half hour to play.

15 THE COURT: Someone is going to deal with the
16 request for judicial notice?

17 MR. LULEJIAN: Yes, Your Honor. Now that we know
18 the two years that the witness referenced, we'll be making a
19 very short judicial notice.

20 MS. DONAHUE: Those are the only two years we need.

21 MR. GUNN: I might want judicial notice of the
22 whole calender if we do it, I guess.

23 MS. DONAHUE: We can work it out. That's fine if
24 he wants the whole calender. Depending how far we go back,
25 that's fine.

1 THE COURT: I will look at the jury instructions
2 and come up with something with regard to the transcripts of
3 the tapes. Obviously, they have no transcript for this
4 videotape. I don't know if you want me to say anything about
5 the video at all?

6 MR. GUNN: No. It's different. It's just
7 testimony they hear like any other testimony, I think.

8 THE COURT: Okay.

9 MR. GUNN: There was one thing I caught in one of
10 the instructions, Your Honor, that the Government and I agree
11 on.

12 THE COURT: Okay.

13 MR. GUNN: Number 23, there's a paragraph for a
14 person under 12 and a paragraph for less than 16 and more
15 than 12.

16 THE COURT: Yes.

17 MR. GUNN: Leaving out the exact age of 12. As I
18 looked at the statute, if someone is 12 exactly, they come
19 under Paragraph 5. Paragraph 5 should read, "Less than 16
20 years old, but at least 12 years old."

21 THE COURT: You're suggesting that in Instruction
22 23 and presumably anywhere else where paragraph --

23 MS. DONAHUE: It also indicates it on the special
24 verdict form. We'll make the same changes.

25 THE COURT: I'll make the change. You want the

1 word "more" in 5 to say --

2 MR. GUNN: Delete the words, "and more than" and
3 substitute the words, "but at least."

4 THE COURT: The Government agrees with that?

5 MS. DONAHUE: Yes, Your Honor.

6 THE COURT: If you have anything else on those
7 instructions, you need to let me know now or very first thing
8 tomorrow.

9 MR. GUNN: We just have formal objections, but no
10 argument. You want me to do that now?

11 THE COURT: Sure.

12 MR. GUNN: Your Honor, we would object to Court's
13 Number 3 and request instead Defendant's Number 1. Note our
14 exception to the Court giving its three instead of our
15 Number 1.

16 THE COURT: That's the reasonable doubt
17 instruction --

18 MR. GUNN: Correct.

19 THE COURT: -- which seems to have been used quite
20 adequately for substantial period of time. I didn't think
21 the Defense Number 1 was in any way preferable.

22 MR. GUNN: Back when I started, Ninth Circuit
23 instructions didn't exist, Your Honor.

24 We would object to Court's Instruction Number 11.
25 As we indicated previously, we don't think there should be an

1 instruction on that.

2 THE COURT: The Court is only giving that because
3 there's been a suggestion made already about the presence of
4 an adult attendant during interview. Counsel indicated that
5 he may, in fact, mention that again. That's the Court's
6 reasoning on that.

7 MR. GUNN: I assume the Court will take out the
8 defendant has testified, Number 16? That's not really an
9 exception, I assume.

10 THE COURT: Correct.

11 MR. GUNN: Court's Instruction Number 18, we take
12 exception to or object to Clause One being included.

13 THE COURT: Let me just verify again with the
14 Government, that you do intend to use that and want that in?

15 MS. DONAHUE: Yes, Your Honor. The Government will
16 argue that evidence only for the two purposes set forth in
17 that instruction.

18 THE COURT: Very good.

19 MR. GUNN: Court's Instruction Number 21, we object
20 and note an exception and have requested instead Defendant's
21 Number 2. That's related to our original motion to dismiss.

22 THE COURT: For the reasons stated therein in the
23 Government's opposition, the Court has decided that the
24 Instruction 21, as framed here, is the appropriate
25 instruction.

1 MR. GUNN: Similarly, Your Honor, we would note an
2 exception to Court's number 23 and request our Defendant's 3
3 instead. That also is related to arguments in the motion to
4 dismiss.

5 THE COURT: Thank you.

6 Anything else?

7 MR. GUNN: That's it.

8 THE COURT: Anything from the Government?

9 MS. DONAHUE: No, Your Honor.

10 THE COURT: We will be -- I will instruct first
11 before argument.

12 Does the Government have a time estimate for its
13 argument?

14 MS. DONAHUE: It's an hour and 15 minutes,
15 Your Honor.

16 THE COURT: Mr. Brown, do you have an estimate?

17 MR. BROWN: Probably about the same, Your Honor.

18 THE COURT: Okay.

19 For the Government --

20 MS. DONAHUE: That was open. For rebuttal,
21 probably half an hour.

22 THE COURT: We'll see you tomorrow at 7:45.

23 (Whereupon proceedings were concluded at 2:15 p.m.)

24 CERTIFICATE

25 I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT

Certificate of Service

I hereby certify that on May 28, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

By: /s/ James H. Locklin
JAMES H. LOCKLIN
Deputy Federal Public Defender

No. 14-50095

**In the United States Court of Appeals
for the Ninth Circuit**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MICHAEL JOSEPH PEPE,

Defendant-Appellant.

On Appeal from the United States District Court
for the Central District of California

The Honorable Dale S. Fischer, Presiding

No. CR-07-00168-DSF

Appellant's Excerpts of Record
[Volume 10 of 12]

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[†] Although this document and the two orders that follow were not filed until after the judgment and notice of appeal were filed, they are placed here in the excerpts because they relate to the trial proceedings.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE DALE S. FISCHER, JUDGE PRESIDING

United States of America,)
Plaintiff,)
vs.) Case No.
) CR 07-168 (A) -DSF
Michael Joseph Pepe,)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS

Day 12

Los Angeles, California

Wednesday, May 28, 2008

Pamela A. Seijas, CSR, FCRR
Official Reporter
Roybal Federal Building
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Room 181-I
Los Angeles, California 90012
(213) 687-0446

1 APPEARANCES:

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17 DEPUTY FEDERAL PUBLIC DEFENDER
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20

21 ALSO PRESENT: ATTACHE GARY PHILLIPS
22 ICE SPECIAL AGENT EDDY WANG
23
24
25

Los Angeles, California, Wednesday, May 28, 2008

8:03 a.m.

-oOo-

(Jury Out)

THE COURT: Are we ready?

MR. LULEJIAN: I think so.

THE COURT: What have we done about the request for
judicial notice?

MR. LULEJIAN: We have decided to turn it into a
stipulation. We thought that would be cleaner and a little
easier to do. We both have signed it and we will read it into
the record.

THE COURT: Anything else, Mr. Gunn?

MR. GUNN: I have one other thing to note for the
record, Your Honor. We have substituted redacted -- there were
four newspaper clippings that were Government Exhibits 1234 to
1237. I had spoken to the Government about certain portions of
those that I thought should be redacted if they were not being
included in their entirety, and the Government agreed to that,
and we have substituted copies with redactions that we have
agreed on for those, just for the record.

MR. LULEJIAN: One last thing, Your Honor.

THE COURT: Yes.

MR. LULEJIAN: The Government wanted to revisit the
issue of moving Dr. Craft's PowerPoint into evidence. We would

1 move the portions that Mr. Gunn --

2 THE COURT: Okay. The jury is waiting. How long is
3 this going to take? That's why I take the bench at 7:45. You
4 are supposed to be here and prepared to start at 7:45. Can you
5 not agree on this?

6 MR. LULEJIAN: Mr. Gunn and I have talked about it --

7 THE COURT: What does revisit the issue mean? Have I
8 already ruled?

9 MR. LULEJIAN: I think, Your Honor --

10 THE COURT: Then that's my ruling.

11 MR. LULEJIAN: Yes, Your Honor.

12 (Jury In)

13 THE COURT: Good morning. Everyone is present. You
14 may continue with the deposition.

15 MR. GUNN: Thank you, Your Honor.

16 MR. BROWN: I apologize, Your Honor. It looks like
17 we're having some technical difficulties.

18 MR. GUNN: We just had a computer crash, Your Honor.

19 (Whereupon, the video was played for the jury)

20 THE COURT: Is that the end of the deposition
21 testimony?

22 MR. GUNN: Yes, Your Honor.

23 THE COURT: Does the Defense have any further
24 witnesses?

25 MR. GUNN: Your Honor, I wanted to move Government

1 Exhibit 1215 into evidence. I had thought it was already in
2 evidence. Sin Samna identified it, but I'm not sure it is. So
3 we would like to move it into evidence if it's not.

4 THE COURT: Any objection?

5 MR. GUNN: If I could have a moment to speak with
6 counsel.

7 MR. LULEJIAN: We have no objection, Your Honor.

8 THE COURT: All right. That will be admitted.

9 (Government's Exhibit 1215 was received)

10 THE COURT: Any further witnesses?

11 MR. BROWN: No further witnesses, Your Honor. The
12 Defense rests.

13 THE COURT: Thank you.

14 Does the Government wish to present any rebuttal?

15 MR. LULEJIAN: Yes, Your Honor, we do. With the
16 Court's permission, I would like to read three stipulations into
17 the record.

18 THE COURT: You may.

19 MR. LULEJIAN: The first stipulation is entitled
20 Stipulation Regarding the Accuracy of Government Exhibit
21 No. 2005. And it reads as follows:

22 "Plaintiff, United States of America, by and through
23 its counsel of record, United States Attorney for the Central
24 District of California and defendant, Michael Pepe, through his
25 counsel of record, Deputy Federal Public Defender Charles C.

1 Brown and Deputy Federal Public Defender Carl F. Gunn, hereby
2 stipulate to the following:

3 "Government Exhibit No. 2005 is an accurate and
4 correct translation of Government Exhibit No. 2004, the
5 handwritten document written in Khmer bearing Kumlang's
6 thumbprint."

7 The second stipulation is entitled Stipulation
8 Regarding Cambodian Calendar.

9 Again, "The Plaintiff, the United States of America,
10 by" --

11 THE COURT: We know who they are between. Just read
12 the bodies.

13 MR. LULEJIAN: The stipulation reads as follows:

14 "The Cambodians follow the Chinese zodiac with two
15 exceptions. First, the Cambodian New Year is celebrated on
16 April 13th rather than a moving date. Second, the Cambodian
17 calendar uses the zodiac signs of the mouse, hare and goat
18 rather than the rat, rabbit and sheep.

19 "Two, the Chinese zodiac cycle is set forth in the
20 calendar attached to the stipulation.

21 "Three, April 13th is the start of each Cambodian New
22 Year, and on that day, a new zodiac sign is assigned for the
23 upcoming year.

24 "And, four, a person born in Cambodia on or after
25 April 13th of any of the above years would have been born under

1 the above zodiac sign which corresponds with the year of his or
2 her birth."

3 The last stipulation is regarding telephone calls
4 placed by the defendant, and the parties stipulate as follows:

5 "One, during the period of his incarceration,
6 defendant Michael Joseph Pepe's telephone calls, with the
7 exception of those between him and his lawyers, have been
8 recorded and monitored by the Federal Bureau of Prisons.

9 "Two, when he entered the Federal Bureau of Prisons,
10 defendant Michael Joseph Pepe agreed in writing that his
11 non-legal telephone calls could be recorded and monitored, and
12 he was aware at all relative times that his telephone calls were
13 being recorded and monitored.

14 "Three, on September 28, 2007, defendant Michael
15 Joseph Pepe telephoned and spoke with Sander DeMontero.
16 Government Exhibit No. 2200 is a true and correct excerpt of
17 this recorded telephone call.

18 "Four, on October 11th, 2007, defendant Michael Joseph
19 Pepe telephoned and spoke with Sander DeMontero. Government
20 Exhibit No. 2201 is a true and correct excerpt of this recorded
21 telephone call."

22 And finally, "On February 4th, 2008, defendant Michael
23 Joseph Pepe telephoned and spoke with Sander DeMontero.
24 Government Exhibit No. 2202 is a true and correct excerpt of
25 this recorded telephone call."

1 And at this point, Your Honor, the Government would
2 move Exhibits No. 2200, 2201, and 2202 into evidence and ask
3 permission to publish to the jury by playing them.

4 THE COURT: Those will be admitted.

5 (Government's Exhibits 2200 through 2202 were received)

6 THE COURT: Ladies and gentlemen, you are about to
7 listen to tape recordings that have been received in evidence.
8 Please listen to them very carefully. Each of you is being
9 given transcripts of those recordings right now to help you
10 identify the speakers and as a guide to help you listen to the
11 tapes; however, bear in mind that the tape recordings are the
12 evidence, not the transcripts. If you hear something different
13 from what appears in the transcripts, what you heard is
14 controlling. After the tapes have been played, the transcript
15 will be taken from you.

16 MR. GUNN: Your Honor?

17 THE COURT: Yes.

18 MR. GUNN: Could the Court explain that this differs
19 from the transcripts of the foreign language that were received
20 in evidence earlier?

21 THE COURT: That's right. The transcripts that you
22 will have with you in the jury room, those are the evidence, but
23 you won't have these documents that we just gave you in the jury
24 room because these are not the evidence. So if it's in the jury
25 room, it's evidence; if it's not in the jury room, it's not.

1 It looks like everybody is ready, Mr. Lulejian.

2 MR. LULEJIAN: Thank you, Your Honor. The first call
3 played is Government Exhibit No. 2200. That's on September
4 28th.

5 (Whereupon, the tape was played for the jury)

6 MR. LULEJIAN: The second call we will play is
7 Government Exhibit No. 2202, which is a call that took place on
8 February 4th of 2008.

9 THE COURT: All right.

10 (Whereupon, the tape was played for the jury)

11 THE COURT: Please stop that, Mr. Lulejian.

12 Ladies and gentlemen, in case you are searching for
13 this, they put them in the wrong order so this is the last one
14 you were given, not the second one.

15 Is that the way you wanted to play it?

16 MR. LULEJIAN: Yes, Your Honor.

17 May I resume?

18 THE COURT: Yes.

19 (Whereupon, the tape was played for the jury)

20 MR. LULEJIAN: Finally, Your Honor, the Government
21 would publish Exhibit No. 2201. That is a telephone call that
22 took place on October 11, 2007. I think that was the second
23 transcript in the package.

24 THE COURT: Okay.

25 (Whereupon, the tape was played for the jury)

1 THE COURT: Does the Government have any further
2 rebuttal?

3 MR. LULEJIAN: No, Your Honor. We would move the
4 depositions of Ly Kim Eng and Kumlang into evidence.

5 MR. GUNN: We would object to 2004, I believe it is,
6 Your Honor.

7 THE COURT: We will resolve that later.
8 Any surrebuttal?

9 MR. BROWN: No, Your Honor. The Defense would renew
10 our Rule 29 motion.

11 THE COURT: All right. Thank you.
12 Nothing else from the Government?

13 MR. LULEJIAN: No, Your Honor. The Government rests.

14 THE COURT: Let's grab up those transcripts quickly,
15 please.

16 THE JUROR: These are the ones from the other day that
17 we had.

18 THE COURT: Just give those to the agent.

19 THE JUROR: Do you want those back, too?

20 THE COURT: Yes. If they are evidence, we will have
21 the original set back in the jury room for you.

22 Thank you, sit back and relax.

23 Members of the jury, now that you have heard all the
24 evidence, it is my duty to instruct up on the law that applies
25 in this case. A copy of these instructions will be available in

1 the jury room for you to consult.

2 It is your duty to find the facts from all the
3 evidence in the case. To those facts, you will apply the law as
4 I give it to you. You must follow the law as I give to you
5 whether you agree with it or not. You must not be influenced by
6 any personal likes or dislikes, opinions, prejudices, or
7 sympathy. That means that you must decide the case solely on
8 the evidence before you. You will recall that you took an oath
9 promising to do so at the beginning of the case.

10 In following my instructions, you must follow all of
11 them and not single out some and ignore others. They are all
12 equally important.

13 You must not read into these instructions or into
14 anything the Court may have said or done any suggestion as to
15 what verdict you should return. That is a matter entirely up to
16 you.

17 The charges in this case are set forth in a First
18 Superseding Indictment which I will refer to simply as the
19 Indictment. The Indictment is not evidence. The defendant has
20 pleaded not guilty to the charges in the Indictment. The
21 defendant is presumed to be innocent and does not have to
22 testify or present any evidence to prove innocence. The
23 Government has the burden of proving every element of the
24 charges beyond a reasonable doubt.

25 Proof beyond a reasonable doubt is proof that leaves

1 you firmly convinced that the defendant is guilty. It is not
2 required that the Government prove guilt beyond all possible
3 doubt. A reasonable doubt is a doubt based on reason and common
4 sense and is not based purely on speculation. It may arise from
5 a careful and impartial consideration of all the evidence or
6 from lack of evidence. If after a careful and impartial
7 consideration of all the evidence you are not convinced beyond a
8 reasonable doubt that the defendant is guilty of a particular
9 charge, it is your duty to find the defendant not guilty on that
10 charge.

11 On the other hand, if after a careful and impartial
12 consideration of all the evidence you are convinced beyond a
13 reasonable doubt that the defendant is guilty of a particular
14 charge, it is your duty to find the defendant guilty of that
15 charge.

16 A separate crime is charged against the defendant in
17 each count. You must decide each separately. Your verdict on
18 one count should not control your verdict on any other count.

19 The evidence from which you are to decide what the
20 facts are consists of, one, the sworn testimony of any witness;
21 two, the exhibits which have been received into evidence; and,
22 three, any facts to which all the lawyers have stipulated.

23 In reaching your verdict, you may consider only the
24 testimony and exhibits received into evidence. Certain things
25 are not evidence and you may not consider them in deciding what

1 the facts are. I will list them for you.

2 One, arguments and statements by lawyers are not
3 evidence. The lawyers are not witnesses. What they have said
4 in their opening statements, closing arguments and at other
5 times is intended to help you interpret the evidence but it is
6 not evidence. If the facts as you remember them differ from the
7 way the lawyers have stated them, your memory of them controls.

8 Two, questions and objections by lawyers are not
9 evidence. Attorneys have a duty to their clients to object when
10 they believe a question is improper under the rules of evidence.
11 You should not be influenced by the question, the objection, or
12 the Court's ruling on it.

13 Three, testimony that has been excluded or stricken or
14 that you have been instructed to disregard is not evidence and
15 must not be considered. In addition, some testimony and
16 exhibits have been received only for a limited purpose. Where I
17 have given a limiting instruction, you must follow it.

18 And four, anything you may have seen or heard when the
19 Court was not in session is not evidence. You are to decide the
20 case solely on the evidence received at the trial.

21 Evidence may be direct or circumstantial. Direct
22 evidence is direct proof of a fact such as testimony of an
23 eyewitness. Circumstantial evidence is indirect evidence; that
24 is, proof of a chain of facts from which you could find that
25 another fact exists even though it has not been proved directly.

1 You are to consider both kinds of evidence. The law permits you
2 to give equal weight to both but it is for you to decide how
3 much weight to give to any evidence.

4 In deciding the facts in this case, you may have to
5 decide which testimony to believe and which testimony not to
6 believe. You may believe everything a witness says or part of
7 it or none of it. In considering the testimony of any witness
8 you may take into account, one, the opportunity and ability of
9 the witness to see or hear or know the things testified to.

10 Two, the witness's memory.

11 Three, the witness's manner while testifying.

12 Four, the witness's interest in the outcome of the
13 case or any bias or prejudice.

14 Five, whether other evidence contradicted the
15 witness's testimony.

16 Six, the reasonableness of the witness's testimony in
17 light of all the evidence.

18 And seven, any other factors that bear on
19 believability.

20 The weight of the evidence as to a fact does not
21 necessarily depend on the number of witnesses who testified.

22 You have heard testimony from persons who, because of
23 education and experience, are permitted to state opinions and
24 the reasons for their opinions. Opinion testimony should be
25 judged just like any other testimony. You may accept it or

1 reject it and give it as much weight as you think it deserves
2 considering the witness's education and experience, the reasons
3 given for the opinion and all the other evidence in the case.

4 You have heard testimony from Sang or Basang, a
5 witness who, one, received immunity. That testimony was given
6 in exchange for a promise by the Government that the witness
7 will not be prosecuted.

8 Two, admitted being an accomplice to the crime
9 charged. An accomplice is one who voluntarily and intentionally
10 joins with another person in committing a crime.

11 Or, three, was convicted of a crime arising out of the
12 same events for which the defendant is on trial. This
13 conviction is not evidence against the defendant and you may
14 consider it only in determining the witness's believability.

15 For these reasons, in evaluating the witness's
16 testimony, you should consider the extent to which or whether
17 the witness's testimony may have been influenced by any of these
18 factors. In addition, you should examine the witness's
19 testimony with greater caution than that of other witnesses.

20 A child who is or is alleged to be a victim of illicit
21 sexual conduct and who is testifying at a trial has the right to
22 be accompanied in court by an adult attendant.

23 The parties have agreed to certain facts that have
24 been stated to you. You should, therefore, treat these facts as
25 having been proved.

1 When a person is unavailable to testify at trial, the
2 deposition of that person may be used at trial. A deposition is
3 the sworn testimony of a witness taken before trial. The
4 witness is placed under oath to tell the truth, and lawyers for
5 each party may ask questions. The questions and answers are
6 recorded.

7 The deposition of Chhoeurn Thi Sang or Basang,
8 Ly Kim Eng and Kumlang have been presented to you. Deposition
9 testimony is entitled to the same consideration and is to be
10 judged, insofar as possible, in the same way as if the witness
11 had been present to testify.

12 The objections were resolved before the testimony was
13 presented to you and should not be considered in any way. You
14 may consider all of the testimony presented.

15 Certain charts and summaries have been received into
16 evidence. Charts and summaries are only as good as the
17 underlying supporting material. You should, therefore, give
18 them only such weight as you think the underlying material
19 deserves.

20 A defendant in a criminal case has a right not to
21 testify. No presumption of guilt may be raised and no inference
22 of any kind may be drawn from the fact that a defendant did not
23 testify.

24 You are here only to determine whether the defendant
25 is guilty or not guilty of the charges in the Indictment. Your

1 determination must be made only from the evidence in the case.
2 The defendant is not on trial for any conduct or offense not
3 charged in the Indictment. You should consider evidence about
4 the acts, statements and intentions of others or evidence about
5 other acts of the defendant only as they relate to the charges
6 against this defendant.

7 You have seen evidence of sexual conduct other than
8 the sexual conduct alleged in the Indictment. First, you must
9 determine whether the other acts were engaged in by the
10 defendant. If you conclude that the conduct was engaged in by
11 the defendant, you may consider that evidence only as it bears
12 on the credibility of the children who have testified and
13 whether the defendant was the person who engaged in the acts
14 alleged by those children and for no other purpose.

15 You have heard testimony that the defendant made
16 statements. It is for you to decide whether the defendant made
17 the statements and if so, how much weight to give to them. In
18 making those decisions you should consider all of the evidence
19 about the statements, including the circumstances under which
20 the defendant may have made them.

21 The Indictment charges that the offenses alleged were
22 committed between on or about certain dates. Although it is
23 necessary for the Government to prove beyond a reasonable doubt
24 that the specific offenses were committed between dates
25 reasonably near the dates alleged in the Indictment, it is not

1 necessary for the Government to prove that the offenses were
2 committed between the precise dates charged.

3 The defendant is charged in seven counts with
4 traveling in foreign commerce and engaging in illicit sexual
5 conduct with seven minor girls. In order for the defendant to
6 be found guilty of these charges, the Government must prove each
7 of the following elements beyond a reasonable doubt.

8 First, the defendant is a United States citizen.

9 Second, the defendant traveled in foreign commerce.

10 And third, while in Cambodia, the defendant engaged in
11 illicit sexual conduct during the time and with the person
12 alleged in the particular count.

13 Travel in foreign commerce means traveling from one
14 country to another country.

15 The term illicit sexual conduct means any one of the
16 following:

17 One, any commercial sex act with a person under 18
18 years of age.

19 Or, two, knowingly rendering another person who is
20 under 18 years to be unconscious and thereby engaged in a sexual
21 act with that other person.

22 Or, three, knowingly administering to another person
23 who is under 18 years of age by force or threat of force or
24 without the knowledge or permission of that person a drug,
25 intoxicant or other similar substance and thereby substantially

1 impairing the ability of that other person to appraise or
2 control conduct, and engaging in a sexual act with that person.

3 Or, four, knowingly engaging in a sexual act with a
4 person under 12 years of age.

5 Or, five, knowingly engaging in a sexual act with a
6 person who is less than 16 years old but at least 12 years old
7 and who is at least four years younger than the defendant.

8 You must be unanimous as to which conduct, if any, you
9 find defendant engaged in.

10 For Paragraph 4 in the previous instruction, the
11 Government is not required to prove that the defendant knew that
12 the other person engaging in the sexual act was under 12 years
13 of age.

14 For Paragraph 5 in the previous instruction, the
15 Government is not required to prove that the defendant knew the
16 age of the person with whom he engaged in the sexual act.

17 And the Government is not required to prove that the
18 defendant knew that the person with whom he engaged in the
19 sexual act was at least four years younger than the defendant.

20 For Paragraph 5 in Instruction 22, it is a defense,
21 which the defendant must establish by a preponderance of the
22 evidence, that the defendant reasonably believed that the other
23 person had attained the age of 16 years. To prove something by
24 a preponderance of the evidence is to prove that it is more
25 likely true than not true. This is a lesser standard than proof

beyond a reasonable doubt. The requirement of proof beyond a reasonable doubt applies to all issues that the Government must prove in this case, except as I will instruct you in Instruction No. 28.

The term "sexual act" means, one, contact between the penis and the vulva or the penis and the anus. And for purposes of this subparagraph, contact involving the penis occurs upon penetration, however slight.

Or, two, contact between the mouth and the penis, the mouth and the vulva or the mouth and the anus.

Three, penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person.

Or, four, the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

The term "commercial sex act" means any sexual act on account of which anything of value is given to or received by any person.

An act is done knowingly if the defendant is aware of the act and does not act or failed to act through ignorance, mistake or accident. The Government is not required to prove

1 that a defendant knew that his acts or omissions were unlawful.
2 You may consider evidence of a defendant's words, acts or
3 omissions along with all the other evidence in deciding whether
4 he acted knowingly.

5 Venue is the location where a criminal charge may be
6 brought under the law. The Government must prove by a
7 preponderance of the evidence that the last known address of the
8 defendant in the United States is in the Central District of
9 California. To prove something by a preponderance of the
10 evidence is to prove that it is more likely true than not true.
11 This is a lesser standard than proof beyond a reasonable doubt.
12 The requirement of proof beyond a reasonable doubt applies to
13 all other issues in this case, except as I have instructed you
14 in Instruction No. 24.

15 You are also instructed that the Central District of
16 California includes the counties of Los Angeles, Ventura,
17 Santa Barbara, San Luis Obispo, Orange, Riverside and
18 San Bernardino. You must consider venue in each count
19 separately. If you find that the Government has not proven
20 venue as to any count, you must find the defendant not guilty as
21 to that count.

22 Ladies and gentlemen, don't talk about the case or
23 form or express any opinions about the case quite yet. We'll
24 take a 15 minute break and then hear from the lawyers.

25 (Recess taken)

1 THE COURT: Is everyone ready?

2 MS. DONAHUE: Yes, Your Honor.

3 MR. BROWN: Yes, Your Honor.

4 (Jury In)

5 THE COURT: Everyone is present.

6 Ladies and gentlemen, you have heard all the evidence,
7 and now it's time to hear the arguments of counsel. I remind
8 you again that what the attorneys say during argument is not
9 evidence. Each attorney will outline for you his or her
10 interpretation as to what the evidence shows. If the attorneys
11 state the evidence to you differently from your recollection of
12 the evidence, you should rely on your own recollection of the
13 evidence. If the attorneys discuss the law and it's different
14 from my instructions on the law, you must rely on the law as I
15 have stated it to you.

16 First, the Government will give an opening argument.
17 Then the Defense will give an opening argument and then the
18 Government will give a closing argument.

19 Ms. Donahue?

20 MS. DONAHUE: Thank you very much, Your Honor.

21 Government's Opening Argument

22 MS. DONAHUE: Good morning, ladies and gentlemen. And
23 I want to start by saying thank you very much. The evidence in
24 this case has not always been very easy to listen to. Or very
25 easy to look at. And we thank you very much for paying such

1 close attention to it.

2 We submit to you that all of this evidence that you
3 have seen over the past couple of weeks proves beyond a
4 reasonable doubt that the defendant is guilty of all seven
5 counts charged in the Indictment.

6 The victims came into court and they all told you what
7 he did to them in his bedroom in his house over in Cambodia.

8 The other evidence -- the other evidence in this case,
9 besides what the victims told you, corroborates or confirms what
10 they told you about what he did to them.

11 THE COURT: Excuse me, Ms. Donahue. You have got
12 something on my screen and that screen but not this screen. Is
13 that deliberate?

14 MS. DONAHUE: Yes. It's deliberate, Your Honor.

15 THE COURT: Fine.

16 MS. DONAHUE: There is a mountain of evidence that
17 corroborates or confirms what the victims told you the defendant
18 did to them, and I am going to go through it with you.

19 The defendant's own words, the things that were seized
20 in his house, like the rope in his bedroom closet, the sedatives
21 that were in his bedroom and his office, his Viagra, the
22 photographs of him naked in his bedroom with L.K.xxx, the
23 homemade child pornography on his computer, the testimony of
24 Basang, the woman, the first deposition you heard, who went out
25 and purchased children and brought them back to see if he wanted

1 to buy them for sex. And, of course, the medical examinations
2 of the victims, which confirmed what they told you happened to
3 them.

4 So let's take a look at some of this mountain of
5 corroborating evidence. And one of the first things I want to
6 take a look at is Government's Exhibit 2007. This is a letter
7 that defendant wrote to his sister Elaine and her husband
8 Richard. This letter was moved into evidence based on a
9 stipulation and it's on the screen in front of you.

10 It's, "Dear Richard and Elaine. I need to start
11 telling you about some of the things that have been happening."
12 And the letter goes on and, in fact, he does explain some of the
13 things that have been happening. He says, "I will try to cut
14 this short and try not to be too graphic. But there may be some
15 things that you have to understand." Keep in mind these are the
16 defendant's own words. "Sang" -- that's Basang, the lady's
17 deposition you heard -- "told her that L.K.xxxxx's mother was
18 giving her to me in a status somewhere between wife and
19 girlfriend." And L.K.xxxxx is L.K.xxx, the second girl who
20 testified. Remember, she told you the defendant would call her
21 either L.K.xxxxx or LKx. And what does the defendant have to
22 say about his own conduct with her?

23 "Basang told me to tie up L.K.xxxxx. I asked the girl
24 if it was okay. She said yes. So I did. Then Sang told me to
25 slap her in the face. I asked her if it was okay. She said

1 yes. Sang said it had something to do with saving face and that
2 L.K.xxxxx would feel better emotionally." Tying up, slapping
3 his rape victim in the face apparently was going to make her
4 feel better. "This is how it started. L.K.xxxxx never had any
5 problems. She seemed happy most of the time."

6 In this letter, he is admitting tying up this little
7 girl, he is admitting that he hit this little girl and he is
8 admitting what she told you, the ongoing rapes that happened
9 over the course of time that she lived in that house with him.

10 "Sang also told me that if I did not take the girls
11 in, then their mother was going to sell them into the sex
12 trade." I think based on the deposition testimony that you
13 heard from two of the mothers, that's certainly not an accurate
14 statement. "Things settled back into a routine." This is his
15 routine. "It seemed to start, the girls would do the massage
16 thing. Later, the massage thing turned into" -- in his own
17 words -- "inappropriate touching, etc. I think Sang was
18 teaching the girls things." And if you remember her testimony,
19 she did teach them. She told them all how to perform oral sex
20 on the defendant.

21 And then he talks about essentially his schedule.
22 "Usually before the went off to school, one of them would bring
23 me breakfast. They would come -- they would all come so I could
24 check their school uniforms and I would give them a little kiss
25 on the cheek before they went off to school. I went back to bed

1 at 9:00 a.m. The girls usually got home around noon and they
2 woke me up with a massage. And then at 1:00, the tutor came."

3 Sang would usually come by with some Vietnamese coffee
4 in the afternoon. Then the defendant would take another nap and
5 around 8:00 that evening, by his own admission, another massage.
6 Most of the time, according to him, it was not at all sexual.

7 These, ladies and gentlemen, are his words written to
8 his own family beginning, as he says, to explain what was going
9 on in his house in Phnom Penh, what he was doing to the little
10 girls in his house.

11 But those are not his only words. There are also a
12 couple of emails recovered from his computer. And those emails
13 also give a lot of insight into the defendant. If you take a
14 look at Government's Exhibit 2009, it's a short email that was
15 written on March 30th of 2006, and it's written to a friend of
16 his named Mack. And what he says in the email to Mack is, "The
17 sweet things I have with me have the most perfect little bodies
18 and attitudes." The most perfect little bodies and attitudes.
19 And, of course, by attitudes, he means their submission to him.
20 Their submission to whatever it is that he wanted to do with
21 them. And, in fact, what he did with them is exactly what he is
22 charged with in this case.

23 Judge Fischer read you that defendant is charged in
24 seven counts with traveling in foreign commerce and engaging in
25 illicit sexual conduct with seven children. In order to prove

1 this case, we have to show you three things beyond a reasonable
2 doubt.

3 First, that he is a United States citizen. You heard
4 a stipulation. Defendant is a United States citizen. He was
5 born in 1953 in Massachusetts. So there is no question about
6 that.

7 Second, we have to prove that he traveled in foreign
8 commerce. And as Judge Fischer instructed you, traveling in
9 foreign commerce just means traveling from one country to
10 another country. And as you heard, we have stipulated in
11 September of 2005, the defendant traveled from Los Angeles to
12 Cambodia. So there is no question about the second element.

13 And the third element is that the defendant engaged in
14 illicit sexual conduct during the time and with a person alleged
15 in that particular count.

16 Illicit sexual conduct is what he did to these girls.
17 Now, as Judge Fischer told you, illicit sexual conduct can mean
18 one of five things, and she itemized those five things for you
19 in the jury instructions. And we're going to focus for a minute
20 on the first one.

21 Judge Fischer told you if you find unanimously, beyond
22 a reasonable doubt, that any -- any one of these five
23 definitions applies, any one of these applies to what he did to
24 any particular girl, then you have to find him guilty of illicit
25 sexual conduct with that girl. There are five definitions and

1 -- well, you have heard the evidence and most -- in most cases,
2 all five definitions apply because of all of the things that he
3 did to these girls, but we'll go through that.

4 The first definition that Judge Fischer read to you,
5 however, applies across the board. And that is a commercial sex
6 act. Illicit sexual conduct means a commercial sex act with any
7 person under 18. Well, all the victims in this case are under
8 18. And, as Judge Fischer told you, a commercial sex act is any
9 sexual act on account of which anything of value, anything at
10 all is given to or received by any person. Anything of value
11 given to or received by any person. And we have that in this
12 case in spades. Anything of value.

13 How about a dollar for every rape? How about a dollar
14 every time they performed oral sex on him? How about the fact
15 that he paid Basang's rent in exchange for her bringing him
16 girls for sex? Remember what she said about that? He likes
17 them 13 or 14 years old and younger and he didn't like all of
18 the girls that she brought to him. He had a particular kind of
19 girl he liked, small, weak, no pubic hair. Paid Basang's rent
20 every month. What did she have to do? Bring him girls from the
21 slums.

22 She testified she brought the girl and defendant would
23 look at the girl and he would decide the price. \$600 for
24 virginity. Anything of value. How about school tuition,
25 clothes, stuffed animals, flowers, candy, jewelry? Photograph

1 after photograph after photograph shows all of the things that
2 he gave to the victims in this case. Birthday parties,
3 Christmas parties.

4 As you heard in the deposition of Kumlang -- Kumlang
5 is the mother of S.R.xxx and S.S.xxx -- she got \$30 per month
6 per girl from January until May. And she said in the deposition
7 this morning, she didn't get her June payment. That's because
8 the defendant was arrested. Anything of value probably also
9 includes the motorcycle that Kumlang said she bought with \$150
10 of the money that the defendant paid her to have her two
11 daughters live at his house and perform oral sex on him. Every
12 single girl was paid, they were brought to him by Basang.
13 Basang was paid. He showered them with all of these material
14 items.

15 You have commercial sex act on every single victim in
16 this case across the board. So we already have all three
17 elements. He is a U.S. citizen, he traveled and he sure did
18 engage in illicit sexual conduct by buying it in many, many,
19 many different ways. These are just some of the examples.

20 Now, when you go back to deliberate, Judge Fischer is
21 going to give you a verdict form, and the verdict form is going
22 to look something like this. You see the form on the left? The
23 verdict form lists each of the victims and they are listed both
24 by their initials that are in the Indictment and by their name.
25 And I'm going to go through with you the verdict form and go

1 through each victim and talk about each victim in the same order
2 in which she came in and testified.

3 So we are going to start with T.C.xx. That's a
4 photograph of T.C.xx. T.C.xx was the first girl. She came in
5 the first Friday that we were in trial. T.C.xx told you that
6 right now she's 15 years old. She was in the defendant's house
7 around Valentine's day two years ago. That's Valentine's day in
8 2006. That means she was no more than 13 years old at the time
9 that she was with the defendant. And T.C.xx told you that she
10 comes from a family of eight children, three brothers and four
11 sisters. Her dad is a construction laborer and her mom sells
12 baked goods.

13 And remember she talked about these photographs? You
14 see her in these photographs, and she is smiling. Remember what
15 she said? She said she was smiling because the defendant told
16 her to smile. And remember -- and we asked, how did he tell you
17 to smile because she doesn't speak English and he doesn't speak
18 Khmer, and remember she went like this? She pulled her face up.

19 This happens to be a picture of the defendant looking
20 at L.K.xxx, Government's Exhibit 1310, but that's what he's
21 doing. He is going like this. He is making sure that those
22 girls smile when he takes their picture. He wants them to look
23 happy in the photographs. And how many times during this trial
24 have we heard were you happy, were you happy, look, you look
25 happy in this photograph. Yeah. He is telling them be sure you

1 put a big smile on your face when I take your picture.

2 T.C.xx told you she was not happy. She did not want
3 to smile. She smiled because she was scared, she was afraid he
4 was going to hurt her. He had hit her. He had hit other
5 children. She was scared.

6 What else did T.C.xx tell you? In the photograph she
7 is holding a rose. And she testified that it was Valentine's
8 day. In fact, the first Valentine's day that she ever
9 celebrated, the first Valentine's day anybody had ever given her
10 flowers. And that photograph of T.C.xx was recovered in a
11 folder on defendant's computer media that was labeled Valentine
12 Girls. Mr. Pixley told you there were a lot of folders on the
13 defendant's computer media and he had given them different
14 names. Valentine Girls contained the photograph of T.C.xx, and
15 Government's Exhibits 1397 through 1403, those are photographs
16 of T.C.xx that comes from the Valentine's Girls folder that was
17 on one of the defendant's computer disks. Those photographs
18 corroborate T.C.xx, both that she was in the house and that she
19 remembered exactly when that was.

20 What else? Of course, T.C.xx told you what the
21 defendant did to her. He put a pill in her soft drink. He took
22 off her clothes. He was naked. She was naked. She said she
23 started to feel really groggy, the effects of the medication.
24 She -- he tied. Remember, he ties. He held her arms up, he
25 tied her arms and he tied her legs apart. Pulled them apart to

1 the bed posts. What did she say? He used a white rope to tie
2 her. What was found in the defendant's bedroom? White rope.
3 He tied her wrists to the bed, he tied her legs to the bed, and
4 he raped her until she bled, and she said she screamed and no
5 one came to help her.

6 The evidence corroborates, it confirms that what she
7 told you is what happened to her. She said he put a pill in her
8 soft drink and it made her drowsy. You know from the search
9 warrant and from the experts who testified they took a pharmacy
10 of sedatives out of the defendant's house during that search
11 warrant.

12 The defendant gave that girl enough sedative to make
13 her feel groggy, to make her weak, to make her unable to resist,
14 and he tied her with a white rope. What corroborates that?
15 Well, you have, remember, the letter that he wrote to his own
16 family admitting that he tied up L.K.xxx. So you know he --
17 he's -- he's admitted to tying up other girls, and the
18 photographs found on his computer show what does he do, he ties
19 girls to his bed.

20 This photograph came from a CD that was in the
21 defendant's office. It's Government's Exhibit 1455. It's from
22 a series that was labeled Ni, N-I. It was obviously taken in
23 defendant's bedroom. That's his headboard. And remember when
24 Dr. Berkowitz, the pediatrician came in, she testified that this
25 girl is no more than 17 years old, probably 15.

1 So back to T.C.xx. Yeah, the evidence backs up what
2 she told you, the physical evidence, the drugs, his own
3 admission to tying girls up.

4 And what else did T.C.xx say? He did not stop with
5 one rape. T.C.xx said he raped her three more times while she
6 was in the house and she told you the second time, the third
7 time, and the fourth time he did not tie her arms and legs. He
8 raped her, but he didn't tie her up. And there are a couple of
9 things that are significant about the fact that she said -- she
10 described for you in graphic detail what he did the first time
11 and then the second and the third and the fourth time. He
12 didn't tie her up.

13 First this is his modus operandi. This is the way he
14 works. Okay. The first time he gets submission by restraining.
15 He drugs, he ties the girl up, he gets that girl to submit to
16 what he wants. The first time.

17 After that he just gets submission through sheer fear.
18 She knows what is going to happen if she doesn't submit so out
19 of fear, she's so scared she submits. And how do we know that's
20 true? Well, there is another email. The defendant wrote this
21 email to a friend of his and he talks about "the first time was
22 a bit of a bother, but after we had a break-through, everything
23 was fine." He's talking about his sexual contact with a minor
24 girl. "After we had a break-through." After he drugged her and
25 tied her up and got her to submit, everything was fine.

1 Remember what T.C.xx said in response to the question
2 how did you feel after the first rape? And she cried and she
3 said despair. Despair. "The sweet young things I have with me
4 are submissive. I have had a break-through."

5 This young girl takes the stand, 15 years old now, 13
6 at the time, and tells you despair. That's exactly -- that
7 despair, ladies and gentlemen, is exactly what he wanted to
8 bring about in these girls. Despair so they would just submit.

9 Another thing to keep in mind about T.C.xx telling you
10 that she was drugged and tied up the first time and then later
11 on wasn't. The Defense is claiming that the people who
12 interviewed these girls have programmed them to lie and to
13 exaggerate. And we would submit to you if the Vietnamese
14 interpreter who interpreted the interview with T.C.xx or Special
15 Agent Taekuk Cho, the man who came in last week and told you he
16 had interviewed T.C.xx last week -- if they had programmed her
17 to lie and exaggerate, why not just tell her to say the same
18 thing happened all four times? Why not make it really easy for
19 her to remember? Why have her say no, no, different things
20 happened at different times?

21 Why? Because, ladies and gentlemen, she wasn't
22 programmed. We submit to you, as the evidence showed, she was
23 simply telling you what he did to her. And of course, as you
24 heard over and over and over in this trial, he made T.C.xx
25 perform oral sex on him. T.C.xx testified that she did, L.K.xxx

1 did it, S.R.xxx did it, S.S.xxx did it and another girl named
2 Ngoc. They all had to give him massages and they all had to
3 perform oral sex on him. More than once when T.C.xx was there.
4 Oh, and don't forget Basang's testimony. She showed them how to
5 do it. She showed them on him how to do it the way he liked it.

6 And of course, T.C.xx testified a dollar every time
7 she was raped, a dollar every time she performed oral sex on him
8 and on top of that, he gave her money to buy clothes and he gave
9 her money to go buy Valentine flowers for him.

10 So when you go back to that verdict form and you
11 decide whether or not he is guilty of illicit sexual conduct
12 with T.C.xx, you have to go down and check what applies.
13 Commercial sex acts applies in spades. Rendering another person
14 under 18 -- that would be T.C.xx -- unconscious with drugs and
15 then having a sexual act with her, yep, that one applies. The
16 third one, knowingly administering to someone under 18 a drug
17 and impairing their ability to appraise or control their
18 conduct, that one applies. And knowingly engaging in a sexual
19 act with someone who is between 12 and 16, that one applies.

20 Defendant pretty much runs the gamut when it comes to
21 the sexual conduct that he engaged in with T.C.xx. There is no
22 question that you can check the box straight down the verdict
23 form on T.C.xx.

24 The second girl who came in and testified was L.K.xxx.
25 What you have in front of you is the verdict form on L.K.xxx.

1 And that's the photograph of her that was taken on June 17th of
2 2006 when the Cambodian National Police came to the defendant's
3 house to execute the search warrant. She was there. Remember,
4 she was living there straight up until the time the police came
5 and did the search warrant.

6 L.K.xxx told you that she was born in 1993. Remember,
7 she said she saw her family book and that her birthday is in
8 June. So she's 14 now, almost 15. When she was at the
9 defendant's house, she was no more than 12 years old. And you
10 remember Dr. Berkowitz, the pediatrician who came in and
11 testified, she saw -- she looked at some of the pictures of
12 naked girls in this case. And as you know, we have naked
13 pictures of L.K.xxx from the defendant's computer.

14 Dr. Berkowitz told you that she's examined between 50
15 and 60,000 children over the course of her career as a
16 pediatrician. She said L.K.xxx in those pictures had not even
17 started to go through puberty. She thought L.K.xxx was 10. 10
18 years old. We asked her 12. She said maybe 12. Maybe 12.

19 And what did L.K.xxx have to say?

20 She told you a little bit about her family.
21 Government's Exhibit 2093 is the house where she lived. And you
22 also heard from L.K.xxx's mother, Ly Kim Eng, the second
23 deposition that was played, the lady who talked about coming in
24 and cleaning the house. Claiming not to know what was going on.
25 That's L.K.xxx's mother. That's where L.K.xxx's mother and

1 L.K.xxx lived when they weren't at the defendant's house.

2 L.K.xxx said that the defendant and Basang gave her a
3 soft drink that had medication in it that made her sleepy.
4 Again, remember the pharmacy of sedatives that came out of
5 defendant's house. The defendant took off her clothes and he
6 tied her. And remember what she said? She begged him not to do
7 it. She said, "Please, let me clean your house. Just don't
8 rape me." Remember what she said? He tied her wrists and he
9 tied her ankles and then he lifted up her legs and he raped her.
10 And she screamed. He slapped her until she stopped screaming.
11 And if you remember what Basang said about L.K.xxx, that girl
12 screamed and screamed. L.K.xxx told you she passed out.
13 Remember, she said she woke up to pain on -- pain in her vagina
14 and blood all over the bed.

15 And L.K.xxx told you that he tied her up with strips
16 of cloth with slip knots on the end of it. This came out of the
17 closet in defendant's bedroom in his house in Phnom Penh where
18 he raped L.K.xxx. So that is the first of many, many, many
19 items of evidence in this case that corroborate, that confirm
20 what L.K.xxx told you.

21 Let's go back to the letter. He admits that he tied
22 her up. There is some rationalization in here that somehow this
23 10-year-old girl wanted to be tied up and raped. This letter is
24 about L.K.xxx. He admits he tied her up. He admits he hit her.
25 He admits this is how it started. He thinks that she never had

1 any problems, she seemed happy most of the time.

2 Remember the cross-examination of L.K.xxx? That girl
3 was quizzed on the witness stand for two hours about exactly
4 when she was first raped, exactly how many times she was first
5 raped. Was it the first day she was there? Was it the first
6 week that she was there? Was it the first month that she was
7 there? He admits he did it. He admits that he did it.

8 The second time he raped had her, L.K.xxx testified he
9 did not tie her up. He pinned her wrists down and he raped her.
10 He did put a pillow over her face because, again, she screamed
11 and she said it hurt. But then remember what she said after
12 that? "I had no energy to fight back."

13 Despair from T.C.xx. "I had no energy to fight back."
14 How many times did this happen? More than 20? Every day? Two
15 to three times a week? She lived in that house for over six
16 months. Think about anything that happens in your life that you
17 do every day or a couple of times a week.

18 Do you remember exactly how many times it happened?
19 She is a -- was a 12-year-old girl from a Third World country
20 with no education. Not surprisingly, she did not keep a diary
21 of each and every time that she was called up to that bedroom
22 and raped. That does not mean that it didn't happen. And, of
23 course, like all of the other girls, she was required to perform
24 oral sex. Remember his letter. At some point the girls would
25 do the massage thing. Later this turned into inappropriate

1 touching, etc. And L.K.xxx told you of after the massage,
2 defendant had her perform oral sex. More oral sex than rapes.

3 And what else did L.K.xxx tell you about the oral sex?
4 She told you he has a growth by his private part, a small
5 growth. What color is it? Skin color. And, remember, she held
6 up her hand and said it's about a quarter of an inch. That
7 growth that she's talking about, it's there. There is -- there
8 is no issue. Look at the picture. This photograph, if you --
9 corroborates L.K.xxx's testimony.

10 Who else performed the massage and the oral sex?
11 S.R.xxx, her sister S.S.xxx, T.C.xx, I.T.. L.K.xxx told you
12 sometimes she sucked while the other girls watched and massaged.
13 Sometimes she watched while the other girls had their turn. She
14 saw S.R.xxx do it, she saw S.S.xxx do it, she saw T.C.xx do it.
15 She corroborates what T.C.xx and S.R.xxx told you, and, of
16 course, like the other girls, a dollar for a rape, a dollar for
17 oral sex.

18 But that doesn't even begin to cover the evidence that
19 corroborates L.K.xxx. Remember, she testified that the
20 defendant took photographs of her naked, more than once. She
21 said it was in her bedroom and it was in his bedroom and it was
22 in the bathroom. And remember her reaction? She was so
23 humiliated she did not want him to take the photographs. At the
24 time we put in front of her a redacted photo, it didn't show her
25 naked, and asked her -- and we didn't publish it to you guys at

1 the time, and said, "Is this you?" And she said, "Yes." And it
2 starts with Government's Exhibit No. 1311 is the first in the
3 series.

4 The defendant, she testified that he took this
5 photograph. You can go to the next one. He told her to smile.
6 He took this whole series of photographs. That's L.K.xxx on the
7 left and the other girl's name is Ngoc. And L.K.xxx told you
8 that she is smiling, she was not happy. First he showed her
9 what to do by pulling her cheeks. And then when she had this
10 photograph in front of her, she said he positioned our legs. He
11 came over and pushed our legs apart before he took the
12 photograph of her on the bed.

13 Obviously the photographs that are on the defendant's
14 computer media corroborate, they confirm for you what L.K.xxx
15 said. Mr. Pixley when he was here, the computer expert, he told
16 you about these pictures. He told you they were taken with that
17 Minolta DImage camera. Mr. Pixley explained to you what did the
18 defendant do? He took the pictures. Did he delete them right
19 off his camera? Nope. He took the pictures to his office and
20 he connected the camera to his computer.

21 Can we go to the next set. He created a photo album
22 on his computer called Nap and LKx. Remember, LKx is one of the
23 two nicknames that he had. He called L.K.xxx either LKx or
24 L.K.xxxxxx. So he created this album. He called it Nap and
25 LKx 2. That's because he already had a photo album on his

1 computer called Nap and LKx 1. And then he moved all the
2 photographs from his camera to his computer. And then
3 Mr. Pixley told you five minutes later, he deleted five of those
4 photographs right away. Five minutes later. Which five?
5 They're the five that are on this PowerPoint in red.

6 The five photographs that he deleted are the five of
7 him naked. The fact that he immediately deleted the photos that
8 directly incriminate him show his own consciousness of his own
9 guilt. He knows it's a really bad idea to have a photograph of
10 himself naked, a photograph of his erect penis next to his naked
11 child victim in his bedroom. So he deleted -- five minutes
12 after he got them on the computer, he deleted the ones of
13 himself naked. Not the ones of the girls naked, the ones of
14 himself. The ones of L.K.xxx and Nap with their legs spread he
15 moved on to a CD. And by the way, remember L.K.xxx said he took
16 photographs of her naked in his bedroom and in the bathroom.
17 That's the end of that series.

18 So he moved them from the camera to the computer and
19 then from the computer to the CD and then he wrote the name of
20 the album, Nap and LKx, on the CD insert. And that's
21 Government's Exhibit 1286. The Cambodian National Police found
22 that CD when they searched his house.

23 And then later on, he deleted these images from the
24 CD. And of course, the Defense has made much of the fact that
25 they were then deleted from the CD. Well, ladies and gentlemen,

1 the fact that he later deleted them does not mean that these
2 photographs never existed. He took these photographs. He took
3 these photographs of L.K.xxx. She was naked in his bedroom. He
4 made her smile and he posed her. He cannot delete that fact.
5 Nor can he delete the harm that he did to that 12-year-old girl
6 by taking these pictures. The fact that he can delete the
7 pictures doesn't change, doesn't delete the fact, the evidence
8 that he raped her.

9 And there is more, hard as it is really to stomach.
10 These were not the only photographs that he took of L.K.xxx
11 naked. Remember, she said he took pictures of her naked in his
12 bedroom, he took pictures of her naked in the bathroom and he
13 took pictures of her naked, she said, in her bedroom. Well,
14 another exhibit that we showed to L.K.xxx but we didn't -- and
15 moved into evidence but we didn't publish to you at the time is
16 this exhibit. It's Government Exhibit No. 2086. These are
17 thumbnail images. Remember, Mr. Pixley told you those are the
18 little two-inch-by-two-inch images. And they're redacted so
19 that we weren't showing her a naked picture of herself.

20 But L.K.xxx looked at these pictures and she said yes,
21 -- very emotionally, yes, that's me. Well, the entire series
22 Mr. Pixley found and he showed you, the entire series is
23 Government's Exhibit 2101 and it shows L.K.xxx posed naked on a
24 chair and on the bed. Only the thumbnails were left on the
25 defendant's hard drive, which means that at least on the

1 computer media that was found by the Cambodian National Police
2 and turned over to the U.S. authorities the large pictures are
3 gone. But the thumbnails are still there.

4 But the fact it was deleted doesn't change the fact
5 that he made a 12-year-old girl take off her school uniform,
6 pose naked on her bed with her legs spread for 30 photographs
7 and then pose also sorts of different ways on a chair for 28
8 more photographs, all naked.

9 And, of course, in addition to all of this
10 corroborating evidence, remember the testimony of the first
11 witness in the case, Dr. Watson, the doctor who examined L.K.xxx
12 right after she was rescued from the defendant's house. Her
13 description was that L.K.xxx had a gaping vagina, the vagina of
14 an adult woman. Why? Because of repeated penetration.

15 So when faced with overwhelming evidence, Dr. Watson's
16 finding, all the photographs of her naked, the Defense
17 cross-examined this girl by quizzing her about exactly when did
18 the rapes start, exactly how many times, trying to humiliate her
19 further by pointing out the fact that, yes, her mother was in
20 the house at the same time that the defendant was raping her. A
21 fact that she did not want to admit. A fact that her own mother
22 can't even admit. The pictures of her naked with the defendant
23 are in November of 2005, and according to her mother, her mother
24 was staying in the bedroom downstairs at that time. Her mother
25 was cleaning house.

1 Defendant says in the letter, "L.K.xxx's mother was
2 giving her to me in a status between wife and girlfriend." And
3 so the Defense quizzes her on just exactly what it is that her
4 mother knew about really the most shameful, horrible things that
5 have happened to her. And they cross-examined her by suggesting
6 that she has somehow made up this story so that she can stay at
7 the shelter where she is now.

8 Yeah. She didn't make up the photographs of his erect
9 penis. She didn't make the thumbnails. She didn't make up the
10 rope. She didn't make up defendant's letter. She didn't make
11 up Dr. Watson's conclusion, nor did she make up the photographs
12 that corroborate what she said.

13 Remember, the photographs of Ni tied up on the bed.
14 That's defendant's bed, defendant's bedroom, same cloth, same
15 bedroom, same bed, same computer media, same MO. This is what
16 he does and this is what he did to L.K.xxx.

17 So going back to the verdict form, if you'd look, it's
18 just like T.C.xx, you can go down the list on the left and check
19 off every box. Commercial, yeah. On top of the money that she
20 got for the oral sex and for the rapes, he gave her mother a job
21 until he kicked her mother out of the house.

22 Oh, and he gave L.K.xxx an education, which, as you'll
23 see, if you look at the physical evidence, there are lots and
24 lots of school books that were taken out of the defendant's
25 house. Virtually all of them are filled with her homework. You

1 can see. That girl is so desperate to get an education, to go
2 to school, to not end up like her mother selling vegetables in
3 the market, living in a shack with no running water. Remember
4 what her mother said, when it rains, the mud pours through the
5 house. She is so desperate to raise her out of those
6 circumstances and to get an education, that she put up with all
7 of this. But you'll see many, many, many of the books that came
8 out of his house are from L.K.xxx.

9 Anything of value. Anything of value in exchange for
10 sex. Clearly the education applies. Rendering her unconscious.
11 Yeah. He drugged her and slapped her the first time and then,
12 as is his MO, got her submission and didn't need to do it after
13 that. Everything straight down the line applies on the verdict
14 form to L.K.xxx.

15 After L.K.xxx, the third girl who came was NTDx. And
16 that's a photograph of NTDx. Remember, she identified herself.
17 She is lying on the couch in the living room at the defendant's
18 house. Government's Exhibit 1159 is a picture of the house that
19 she shares with her family. You can see the difference between
20 her family house and the defendant's house. She told you that
21 she is 14 years old now. So two years ago in the spring of 2006
22 when she was at defendant's house, NTDx was 12 years old.

23 She said that she was at defendant's house, she told
24 you it was around the New Year holiday. That's actually
25 corroborated. The Cambodian new year is in April. And that

1 photograph of her was on the defendant's computer media in a
2 folder that was labeled New Years Girls. And the date of this
3 photo, remember Mr. Pixley said to figure out the dates, you
4 have to add 185 days. The defendant's camera was off by 185
5 days. When you figure out the date on this photo, it's taken
6 April 17th, 2006, that's right around the Cambodian New Year.

7 What did NTDx say about her time at the defendant's
8 house? She said she saw clothes there that showed -- clothes
9 and books and stuffed animals showed that other girls lived at
10 the house but the other girls were not there when she was there.
11 The only other girl who was there is the other girl who is
12 pictured in that photograph, Ty Lynn. That's not L.K.xxx,
13 that's not S.R.xxx, that's not S.S.xxx, that's not I.T.. there
14 were no other girls in the house.

15 Remember the deposition testimony of L.K.xxx's mother,
16 Ly Kim Eng. She said she took half a month off at the New Year
17 and she took her daughter home. It was the New Year holiday.
18 The other girls, his regular girls went home, went home with
19 their parents. They were out of the house.

20 So what did he do? Well, he can't go for even one
21 week without raping a little girl, so he called Basang and he
22 had Basang purchase NTDx to come in for a week. And if you look
23 at that email, Government's Exhibit 2010, he talks about this.
24 It's an email that's written May 14th of 2006. Remember the
25 picture of her is taken in mid April of 2006.

1 And in this email he talks about how the girl -- the
2 girls in this -- "the girls were here over the holiday. The one
3 with the toothy grin was a fresh one. NTDx had never been there
4 before. The first day she was a bit of a bother, but we had a
5 break-through. Then everything was great. The other one did
6 not look so great, but she had a great body. I brought her
7 along for company. You know how these people are."

8 This is written three weeks after the Cambodian New
9 Year, talking about the girls that he had at his house over the
10 New year. This is the break-through that he was talking about.

11 And what did NTDx tell you about what happened?
12 Remember, she testified he used rope to tie her hands and to tie
13 had her legs and she screamed. He had hit her across the face
14 with his open hand. We asked her if she recognized anything in
15 this bag, and remember what she held up? She held up the tape
16 and said he put this over her mouth to keep her quiet. And he
17 put a pillow on top of her face, and she thought that she was
18 going to suffocate. And she said how she was tied, right hand
19 to right leg, left hand to left leg. Look familiar? Look at
20 the picture of Ni taken in the defendant's bedroom on his bed.
21 Same way.

22 NTDx struggled. She screamed, and then according to
23 her, she told you she submitted. And according to the email
24 that he sent in May of 2006, he -- he confirms she submitted.
25 She told you that she was at the defendant's house for a week

1 and that he raped her many times during that week but that after
2 the first time, she didn't struggle. She also said he didn't
3 require her to perform oral sex on him. If she was coached, why
4 not coach her to tell the same story? She said no, no oral sex.
5 She was there for only a week, apparently. Basang didn't bother
6 to teach her what to do. She was only there for a limited
7 period of time.

8 He brought her in, he raped her, and then he just
9 threw her back into the slums of Phnom Penh, like a used gum
10 wrapper, tossed her out. Remember, she identified Basang. She
11 knew Basang as Ms. Kia. She had met Basang at the market.
12 Basang came to her house, picked her up, put her on the back of
13 the motor bike, drove her to defendant's house. At the end of
14 the week, picked her up, took her home. Defendant didn't even
15 give the money directly to NTDx. Defendant gave the money to
16 Basang, and Basang took the money back.

17 Basang had talked to NTDx's mother before Basang had
18 even picked her up. And, remember, Basang is the one who has
19 her rent paid every month by the defendant for bringing him
20 girls, preferably girls -- small girls between the ages of 13
21 and 14, if not younger.

22 So when you have that verdict form on NTDx, you have
23 got the commercial sex act, you have the force, and you have
24 engaging in a sex act with a 12-year-old girl. Same thing, you
25 can check the boxes straight down the column with NTDx.

1 The next girl who came in and testified was I.T..
2 I.T. told you that she is 13 years old now and that she was at
3 defendant's house in the spring, right around this time actually
4 two years ago. So I.T. was 11.

5 We showed you Government's Exhibit 1158. This is the
6 building that I.T.'s family shares with eight other families.
7 Her grandmother and her uncle live there and her father. And
8 her father sells ice cream to support the family. One of the
9 ladies in the neighborhood managed to hook I.T. up with Basang
10 and so I.T. ended up at defendant's house. And I.T. told you
11 that the defendant raped her twice. She also told you that she
12 screamed and complained and didn't like it. This girl told you
13 that she was not very submissive. And what happened to her?

14 Well, the first time she was in defendant's bedroom,
15 he handed a pill to Basang. Basang put the pill in a glass of
16 water and gave it to I.T.. remember, of course, the pharmacy of
17 sedatives in defendant's house. She began to feel sleepy. He
18 put her on the bed, he got out the ropes, he tied her wrists, he
19 tied her ankles and then he looped it together, hog tying her.
20 He blindfolded her and he gagged her. And she said what
21 happened? She passed out. When she woke up, she was bleeding,
22 bleeding from the mouth, and she had pain in her vagina. Again,
23 tying up girls, it's what he does.

24 I.T. told you he raped her a second time, also in his
25 bedroom. He told Basang to make I.T. take a shower, and she

1 said he did not touch her in the shower. When she got out of
2 the shower, he put some cream on her vagina, and remember, she
3 looked at the photograph and identified the KJ jelly. There is
4 a photograph. And as you know, KY was found in the defendant's
5 bedroom.

6 I.T. said the second time he pinned her down but he
7 didn't tie her. Again, if they're programmed, why not just have
8 her say she was bound, gagged and tied the second time as well
9 as the first? And again this is consistent with his MO. He had
10 a break-through with I.T. the first time. I.T., like the other
11 girls, also testified about the oral sex. L.K.xxx, S.R.xxx,
12 S.S.xxx performed oral sex on the defendant and the massages
13 during a one-week period. He had her come to his room. He had
14 her perform oral sex, she said, almost every day.

15 The letter that he wrote about L.K.xxx, the sexual
16 massages, corroborate I.T. as well as the other girls.

17 Basang brought I.T. over to the defendant's house.
18 I.T. thought she was going to be sent to school, and I.T.
19 identified Basang.

20 I.T. also recognized the house and, if you remember
21 from the interview, she also talked about a fish. And when
22 asked what do you mean a fish in the house? Are there fish
23 there. She said no, a carved fish. And, in fact, there was a
24 wooden carved fish in the defendant's house.

25 The photographs that are taken of I.T. show that she

1 was at the defendant's house as early as April of 2006 and she
2 was there through at least May 20th of 2006, based on the dates
3 on the Government exhibits. If you look at Government's
4 Exhibits 1341 and 1356, Mr. Pixley did that chart where he
5 correlated all the dates of all the exhibits, and essentially it
6 puts I.T. in the house in between April 21st and May 20th of
7 2006.

8 Defendant was taking her photograph during that time.
9 She was performing oral sex on him. She said Basang taught her
10 how to do it. Basang showed her how to do it. And she said
11 that the defendant did to her what he did to the other girls,
12 tied up and raped.

13 Now, the Defense has made a very big deal out of the
14 identification, or misidentification. On June 16th, which was
15 the day before the search warrant, special Agent Phillips
16 interviewed I.T.. remember, I.T. had been kicked out of the
17 house. She had come to the attention of law enforcement and law
18 enforcement was investigating based on what I.T. had said. So
19 the day before the search warrant, he interviewed her to find
20 out where it happened, when it happened and who had done it.

21 And the only photograph he had of the defendant at the
22 time was a photograph from 1986, a 20-year-old photograph.
23 That's the photograph on the left. It's Government's
24 Exhibit 2085. What did the defendant like look in May of 2006?
25 Well, we know because he had his photograph taken with Khieu San

1 and Khieu San's wife at the plowing ceremony. Remember
2 yesterday Khieu San said it was in May of 2006.

3 If you look at that photograph from May of 2006,
4 defendant had gray hair. He hadn't died his hair black at the
5 time anyway. The man that was raping I.T., the man that was
6 having I.T. perform oral sex on him is the man -- is the
7 defendant on the right with gray hair.

8 And she looked at the 20-year-old photograph of him
9 with a mustache on the left and said, "No, that's not him."
10 Well, that tells you a couple of things. One, it tells you she
11 didn't let the agents talk her in to identifying anybody, which
12 flies in the face of the claim that all of these girls were
13 railroaded.

14 And No. 2, put it in context. She was in the house
15 for a month. He was taking her picture for a month. Basang
16 brought her there. Basang -- she was getting the money, a
17 dollar for oral sex. This was not a one-time rape. And she was
18 looking at a bunch of pictures and trying to identify somebody.

19 There was a lot more evidence. All the corroborating
20 evidence in this case tells you that I.T. was in that house,
21 being required to perform oral sex on him and being raped twice,
22 as she told you, by him. And that is simply not undercut by the
23 fact that she looked at a 20-year-old photograph of the
24 defendant with a mustache and said, "No, I don't think so."

25 And remember what she said? His hair is lighter. You

1 know what? She was right. His hair was lighter. You can see
2 it in the photograph from the plowing ceremony.

3 And there is one more piece of evidence that tells
4 you, that corroborates I.T., that confirms. On June 3rd of
5 2006, which would be just after I.T. had left the house, the
6 defendant wrote an email to his friend Mack, the same one that
7 he talked about the sweet young things with the great attitudes.
8 And he says at the bottom, it's highlighted, "There has been
9 some problems related to a fresh one. I dare not put it all in
10 writing so I will have to save that story for when we meet.
11 Mack, remember do not be talking about our activities to anyone.
12 Not even your brother."

13 "There have been some problems related to a fresh
14 one." That fresh one would be I.T.. and he did have a problem
15 with her because when he threw her back, she didn't just
16 disappear into the slums of Phnom Penh; she came to the
17 attention of law enforcement.

18 After I.T. testified -- oh, let's go back to the
19 verdict form. I.T. is Count 1. That's first. And if you go
20 down the verdict form, again, commercial sex act, force, drugs,
21 it's all there. It's the same. You can check the box straight
22 down the left-hand column on I.T..

23 The next girl who testified was K.S.x. K.S.x told you
24 that she was -- she is 14 years old. When she was at the
25 defendant's house, which was way back in the fall of 2005, this

1 girl was at most 12 years old. And you know she comes from a
2 very poor family. Her mother supports the family by selling
3 fruit in a market in Phnom Penh and her dad is unemployed. Her
4 family could not afford to send her to school. She had to stay
5 home and take care of a younger sibling.

6 And you remember K.S.x, you remember her demeanor in
7 court. This is clearly a very traumatized girl. What do we
8 know about K.S.x? She was obviously at defendant's house, if
9 you look at the series of photographs, 1301 through 1307. No
10 doubt about that.

11 And K.S.x testified that Basang brought her to the
12 defendant's house. Basang taught her how to perform oral sex on
13 the defendant. And remember Basang told you, as to the girls
14 that she brought in, she demonstrated what to do.

15 And K.S.x told you the defendant gave her a dollar
16 every time she performed oral sex on him or, as she put it, "He
17 put his private sex part into my private sex part."

18 And she told you that it happened three times. The
19 first time he didn't fully penetrate her. The second and third
20 time he did.

21 K.S.x also said he never drugged her and he never tied
22 her up. And you, I think, can judge for yourselves why if you
23 look at her demeanor. That girl didn't fight back at all. She
24 submitted from the get-go. She told you she thought she was
25 supposed to stay at defendant's house. At some point the

1 defendant left. She was alone at the house with the maid. She
2 stayed there anyway. When he came back, he required her to
3 perform oral sex.

4 How do we know that's true? Well, if you look at
5 Mr. Pixley's timeline, the pictures of K.S.x are from August of
6 2005. You know that he came to the United States, he was in the
7 United States in late August. He flew back to Cambodia in early
8 September of 2005. He came back to Cambodia and K.S.x was at
9 his house and he raped her and he made her perform oral sex. If
10 you look at the dates in Mr. Pixley's timeline you can see she
11 was there right before he came to the United States. She told
12 you he left and then he came back.

13 "After he came back were you required to engage in sex
14 acts."

15 "Yes."

16 What else did K.S.x tell you? She said that her mom
17 took her to the hospital after she left the defendant's house.
18 Why? In K.S.x's words, it was so that they could sew her
19 bottom. Remember what Dr. Watson told you about K.S.x? Wide
20 vaginal opening. Evidence of previous trauma with splitting and
21 healing of vaginal skin just inside the opening.

22 Really traumatized. She came to court. She told you
23 what happened to her, the medical evidence. And the photographs
24 clearly put that girl in his house. And if you look at the
25 verdict form on her, commercial sex act and knowingly engaging

1 in a sex act with a young girl, it's tailored to fit exactly
2 what it is that he did to her.

3 And finally, the last girl who came in here and who
4 testified and who was cross-examined for a very long time was
5 S.R.xxx. And you know how old S.R.xxx is because the second day
6 that she testified she told you was her 12th birthday. She was
7 celebrating her 12th birthday. So two years ago when she was in
8 the defendant's house, she was nine, going on ten.

9 S.R.xxx told you that the defendant didn't even call
10 her by her name. He didn't even call her S.R.xxx. He had a
11 nickname for her. He called her Smaling. And if you listen in
12 that deposition of Basang, Basang talks about Smaling and she
13 points out, when she looks at the pictures, she is pointing at
14 Smaling, Smiling, Smeling -- that's S.R.xxx.

15 S.R.xxx told you and S.R.xxx's mother, Kumlang,
16 testified that the family house burned down shortly before the
17 defendant generously, as Kumlang and others said over and over
18 and over again, took S.R.xxx and S.S.xxx into her house.

19 And what did S.R.xxx tell you about the sex acts? She
20 had been in defendant's bedroom many, many times, and at age
21 nine, ten, she was naked, remember? Said how did you get naked?
22 What happened? Sometimes the defendant took her clothes off for
23 her. L.K.xxx was naked. S.S.xxx was naked. And Basang showed
24 them all how to perform oral sex on the defendant.

25 And she told you sometimes the semen went into her

1 mouth. It tasted fishy. She went into the bathroom, she spit
2 it out, and then she brushed her teeth. And, of course, she got
3 a dollar every time she performed oral sex.

4 She also told you he never put his penis into her
5 vagina. Oral sex. He did put his tongue all over her body, and
6 she told you how that felt. She described how she had to sit
7 naked on his face while he licked her. And she said it was very
8 painful and she was embarrassed and she really didn't know
9 whether she could tell him to stop. And he paid her for the
10 oral sex. He paid her mother. You heard her mother. \$30 per
11 month per girl.

12 What else did S.R.xxx tell you? S.R.xxx also
13 identified the mark on defendant's leg. Remember, she held up
14 her little finger and she said it was this much, just this much,
15 a little reddish mark at the end of her pinkie. And she said it
16 was on the defendant's inner thigh. And remember on
17 cross-examination Defense counsel kept pointing at his outer
18 thigh and saying it was here, it was here, and she said no. She
19 remembers very, very well exactly where that mark was on the
20 defendant. And you saw the tape played, and on the tape she
21 stood up and she showed the agents. She told the agents he's
22 fat and he has a mark on his leg.

23 She spent six months with her head between his legs.
24 She is 11 years old. What does she remember about him? She
25 remembers about him what she saw. She was cross-examined about

1 this and said, "You're laughing. You're laughing on that tape
2 when you're talking." And did you see the look on her face?
3 She said she wasn't laughing. She said, "I was so ashamed. I
4 was so ashamed."

5 And she's in picture after picture after picture at
6 the defendant's house. He paid for her school. He paid her
7 mother. He brought Christmas gifts. He paid for her clothes.
8 Her mother bought a motorcycle with the money.

9 So as to S.R.xxx on the verdict form, you've got
10 commercial sex, you've got oral sex, no question at all about
11 that.

12 And finally, ladies and gentlemen, S.R.xxx's sister is
13 S.S.xxx. S.S.xxx did not testify. That's her picture. It's
14 Government's Exhibit 1392, and there are lots and lots of other
15 pictures in this case that show S.S.xxx. She didn't testify,
16 but there is plenty of evidence to convict defendant of engaging
17 in illicit sexual conduct with S.S.xxx.

18 Remember, S.R.xxx said S.S.xxx is a year older than
19 she is, so that means now she's 13. So two years ago she was
20 11.

21 L.K.xxx, T.C.xx and I.T. all testified that S.S.xxx
22 performed oral sex on the defendant and, of course, Basang
23 testified that she taught the girls how to do it. And you know
24 the money that was paid to S.S.xxx's family in exchange for the
25 sex. So as to the verdict form, commercial sex and oral sex

1 apply with equal force to S.S.xxx as they do to her sister,
2 S.R.xxx.

3 That's all the girls. The mountain of evidence that
4 corroborates them of course includes what you heard, lots and
5 lots and lots of testimony about which is the fleshy growth on
6 the defendant's thigh, the mole, the mark, whatever you want to
7 call it.

8 What do we take away from all that testimony? One, it
9 was there. The photographs show it. It was there in the summer
10 of 2006. The pictures show it. Special Agent Phillips
11 testified that on July 6th, which was after he had interviewed
12 L.K.xxx and after he had interviewed S.R.xxx -- not before,
13 after -- he saw the mole on the defendant's thigh and that now
14 there is a scar. Whatever happened to it, whatever he did to it
15 or didn't do to it, there is a scar there now. It was -- it was
16 there.

17 Illicit sexual conduct, commercial sexual act, I
18 submit to you, ladies and gentlemen, we have that in spades.

19 The medical evidence, in addition, is just summarized
20 for you. The medical evidence, every girl who says that the
21 defendant penetrated her with his penis is corroborated by
22 Dr. Watson, the very first witness who testified. Seeing
23 vaginal injury consistent with forced penetration. NTDx, no
24 hymen visible. T.C.xx, no hymen visible, vaginal opening wide.
25 And K.S.x I mentioned earlier.

1 So based with the mountain of corroboration, what is
2 the Defense response? The Defense response is in some of the
3 photographs that the defendant took of all these girls, these
4 girls looked happy, and if they're happy, they're not being
5 raped.

6 And, secondly, the interpreters asked the girls some
7 leading questions; therefore, we can't trust anything about what
8 the girls say. So let's take a quick look at those two
9 responses by the Defense.

10 The Defense argument is essentially they appear happy
11 in some of these pictures; therefore, defendant cannot have been
12 the one who is sexually abusing them.

13 That's simply not true. Remember the second witness
14 who testified, Special Agent Clemente from the FBI. He talked
15 to you about grooming. He is an expert. But he had not
16 examined any of the evidence in this case. He told you he
17 doesn't know anything about this case. He is here as an expert
18 just to display how sex offenders acquire victims and how sex
19 offenders keep them compliant.

20 What Jim Clemente described for you the very first day
21 of trial is exactly what the defendant did. He loved to take
22 pictures of children. He loved to take pictures of the girls
23 that were in his house, and essentially what he did is he
24 documented his own grooming process. And grooming is simply how
25 an offender gains sexual access, authority and control over a

1 child and then inhibits, prevents that child from moving forward
2 and disclosing to the authorities. There is evidence of
3 evidence of grooming in this case in spades.

4 Jim Clemente told you what lures do they use for
5 children? Attention, affection and assets.

6 And assets, we only laid out some of the exhibits on
7 the table. There is lots and lots of toys that came out of the
8 defendant's house.

9 Attention, they're all dressed up. The party dresses.
10 You can see the beautiful dresses that he got them. The
11 Christmas presents. L.K.xxx's birthday party that you heard so
12 much about from the Defense. Of course he is showering her with
13 attention.

14 Affection, these are little girls from the slums of
15 Cambodia who had absolutely nothing. Who came from families
16 that were willing to give them up. And he took them into this
17 home that compared to where they lived was an absolute palace.
18 And he showered them. Monetarily with affection and with all
19 sorts of presents. You can see them in all the photographs on
20 the balconies. And what's interesting, if you look, ladies and
21 gentlemen, even when they are surrounded by all of these
22 wonderful things, they're not all smiling in every picture.

23 And I would encourage you to look particularly at the
24 pictures of I.T. who resisted the defendant's efforts to groom
25 her and is virtually never smiling when she is looking at the

1 camera, looking at the defendant. She may be smiling when she
2 is looking at the other girls. But she sure is not smiling.

3 Jim Clemente told you poor kids are most at risk for
4 grooming. Kids from intact families, families that can care for
5 them, families who can provide for them? No. Children most at
6 risk for grooming are children who come from poor families where
7 this is very little parental support. He doesn't know about
8 this case, but I'm sure if we ask him how about children that
9 come from families that are absolutely more than willing to give
10 them up. Some of these girls came almost pre-groomed to
11 defendant's door.

12 And then, of course, Special Agent Clemente told you
13 part of the grooming is building a relationship, not only with
14 the child, but with the child's family. You gain the trust of
15 the parent. You build a relationship with the parent. Where
16 were these girls to go? Were they going to go back and tell
17 their mother, gee, look what's going on?

18 He bought the mothers. He had the mothers over to his
19 house for Christmas parties. And, of course, he exploited the
20 victims' needs for attention and affection. Jim Clemente told
21 you that's what groomers do. L.K.xxx at school. S.R.xxx and
22 S.S.xxx and T.C.xx both in their beautiful birthday dresses.
23 "My first birthday party ever, my first birthday presents ever,
24 my first Christmas ever, my first Christmas presents ever, my
25 first Valentine's Day ever." They all told you that.

1 He was very adept, as you heard from the Defense, at
2 picking out needy children and satisfying their needs. You see
3 them in their school uniforms. You heard from the girls the
4 desperate desire for education. They're 11, 12, 13 years old.
5 And they're only in the second, third, fourth grade. That's
6 because they haven't had any education until they got to the
7 centers where they are now. The defendant knew that. He knew
8 that sending them to school was a weak point that he could
9 exploit with the parents.

10 And he engaged in activities and held himself out to
11 parents and the community as a person who is trustworthy around
12 children. And this really goes to the Defense witnesses, who
13 really have kind of confirmed the obvious, which is that the
14 defendant has a very strong interest in poor children in
15 Cambodia. We have heard over and over about his school supply
16 distribution program. And we would submit to you it does
17 confirm the obvious. That he is very strongly interested in
18 children.

19 But it's more than that, ladies and gentlemen. What
20 it does is it made his interest in children appear legitimate.
21 All these important people in Cambodia would not question why he
22 would have children around. And how do you think those kids
23 felt seeing him with some of the most important people in
24 Cambodia. What message did it send to them? The message that
25 is sent to those kids is that he is a really important man. He

1 knows really important people. You should just be quiet and
2 submit. Because nobody is going to believe you. He had their
3 world locked down. He bought the teachers at their school. He
4 had the second in command in the school coming and tutoring
5 them. Nobody at the school was going to believe them. He
6 bought the parents, and he cooperated. He has got the former
7 Prime Minister of Cambodia coming in here and testifying on his
8 behalf. He locked these girls' world down. There was no place
9 for these girls to go other than to stay at his house and
10 submit.

11 And you heard from the tapes his very, very, very
12 desperate attempts to get victims -- reunite the victims with
13 their families, which is really ironic since he is the one who
14 took them away from their families in the first place and
15 brought them into his house. But he knows -- he knew that if he
16 could get the victims away from the shelters and back with their
17 families, they would not come to the United States. They would
18 not testify. They would not tell you what he did to them.

19 Ladies and gentlemen, as you listen to Mr. Brown, keep
20 in mind all of these facts, keep in mind all of this
21 corroboration. As he talks to you about the Vietnamese
22 interpreter who used bad language -- apparently using bad
23 language is worse than actually raping the girls -- but who used
24 bad language in front of the girls. And as he talks to you
25 about the leading nature of the interviews and tries to persuade

1 you somehow that that means the defendant is not guilty, keep in
2 mind the mountain of evidence that corroborates what the girls
3 told you.

4 And I will speak with you very briefly after Mr. Brown
5 does and I will ask you at that time to return verdicts of
6 guilty on all seven counts of the Indictment for all seven of
7 those girls.

8 Thank you.

9 THE COURT: Thank you.

10 Ladies and gentlemen, don't talk about the case or
11 form or express any opinions about the case quite yet. It will
12 be finally submitted to you soon. We will take our 15 minute
13 break.

14 (Recess taken)

15 (Jury In)

16 THE COURT: Everyone is present.

17 Mr. Brown?

18 MR. BROWN: Thank you very much, Your Honor.

19 Defense Closing Argument

20 MR. BROWN: Good morning, ladies and gentlemen. We
21 have come to the end of a long four week journey, and on behalf
22 of Mr. Pepe and Mr. Gunn, we would like to thank you, first of
23 all, for all of your attention in this case. I know at times
24 the testimony was a little long and tedious, but we want to
25 thank you for your attention.

1 There is no doubt that the allegations in this case
2 are shocking and graphic and horrific. The allegations in this
3 case are serious. And I think it's natural to want to empathize
4 with the alleged victims in this case and it's natural to want
5 to protect them. It's also easy to get swept up in the emotion
6 of allegations like this. It's easy to get caught up in anger
7 and snap judgments about what kind of person Mr. Pepe is. It's
8 probably easy to conclude from what you have heard so far that
9 you think he is a monster or a scumbag.

10 But in a case like this what is also required is the
11 detached and reasoned judgment and the reasoned analysis of the
12 facts. We ask that you not get caught up in the emotion of the
13 allegations and look carefully at the Government's case.

14 As I said, these charges are serious and this is the
15 kind of case that requires more judgment, more careful
16 consideration of the evidence, more analysis, more careful
17 critique of the Government's evidence. It's not as easy as
18 checking a box in the Indictment. The Government has a high
19 burden of proof in criminal cases for a reason. A person's
20 liberty is at stake. A person's fundamental interests are at
21 stake. And I think that the issues and the interests that are
22 at stake in this case are exacerbated tremendously by the novel
23 and unique nature of this extra-territorial prosecution.

24 If you look carefully at the Government's case, there
25 is serious concern here. And we ask that you look carefully at

1 all the evidence. And I'm going to provide you with -- from our
2 perspective, an umbrella or intellectual framework to kind of
3 consider and weigh the problems with the Government's case.

4 There is three major areas of concern in this case.
5 The first, as I touched on or alluded to, is the nature of the
6 overseas investigation itself. The difficulty of -- that
7 Mr. Pepe is placed in when he is accused of a crime that
8 occurred thousands and thousands of miles away, and the
9 difficulty of defending those kind of allegations. And that is
10 unique to these charges.

11 The second area of concern is concern surrounding the
12 testimony of the alleged victims. The Government highlighted
13 some things that they thought proved their case, but they did
14 not touch on some of the major, major inconsistencies that are
15 present here. And we're going to talk about that.

16 The third major area of concern is the Government's
17 theory of prosecution, and as I said, I think it's natural to
18 want to empathize and reach out to protect the alleged victims
19 in this case, but to infantilize them and say that they're from
20 the scums of Cambodia without considering the larger context
21 that this case arises in I think is a bit of an
22 over-simplification. So we are going to talk about the problems
23 with the Government's theory as well.

24 But back to the first heading, the concerns we have
25 about the overseas prosecution. Mr. Gunn touched on this in his

1 cross-examination of Agent Phillips. What we have here is a
2 semi-joint investigation with U.S. law enforcement and numerous
3 officials from the Cambodian National Police. And it appears
4 that from the beginning, there was at best a staging of crucial
5 pieces of evidence here. At worst we have the planting of
6 evidence.

7 This is again exacerbated because the rules of the
8 game are a little bit different in Cambodia than they are in the
9 United States. There is not the kind of judicial oversight that
10 we have here of a law enforcement investigation, the concepts
11 that we take for granted, Miranda, search and seizure, the
12 Fourth Amendment. These bedrock concepts that we take for
13 granted don't even exist in Cambodia. The concepts don't even
14 exist.

15 We're talking about a Third World country that's not
16 too far removed from a brutal genocide. Their legal
17 infrastructure is just not the same that we have here. So we
18 have -- we have the problems with distant oversight and there is
19 no accountability really.

20 The Cambodian National Police is not accountable to
21 the judge in this courtroom. So I think we really need to look
22 at that and look at how this case began and the kind of
23 investigative techniques that were used. And it -- it was
24 sloppy. The house was not sealed probably. We have gross
25 contamination of important forensic computer evidence. And like

1 I said, can we really trust the investigation that occurred
2 thousands and thousands of miles away with a Third World police
3 force.

4 First, I would like to talk about the staging of
5 evidence. Remember in opening statement the prosecution
6 referred to the bag of rope and tape as the so-called rape kit,
7 Mr. Pepe's rape kit. Remember how she argued that in her
8 opening statement.

9 And do you remember Government Exhibit 1057 where
10 there is a photo of some panties next to some KY jelly. I think
11 the staging of the evidence in this case is serious, serious
12 cause for concern and I want to show you some examples of that.

13 Again, this is -- this sample is talking about the
14 Government's so-called rape kit and let's see how the rape kit
15 was really created.

16 (Video played for the jury)

17 MR. BROWN: What we have here is the investigating
18 officers throwing items on a bed, cross-contaminating what they
19 say they found in the closet with a condom, KY jelly and other
20 lubricants from a totally different source. This is how the
21 rape kit that the prosecutor referred to in opening statement
22 was manufactured. And remember when Agent Phillips brought out
23 this bag of evidence and testified that inside this bag was a
24 wire. In addition to the rope and the tape and the jelly and
25 the condoms, there was wire. Remember how dramatic that was

1 when he pulled the wire out of the bag.

2 First of all, there is no wire in the frame in the
3 video sample that we're showing you. There are some stills from
4 that same clip. No wire there. No wire there. We see the KY
5 jelly and the condoms already on the bed. This is the
6 photograph that was staged by the investigators. Here is a
7 close-up photo of the bag. Again in this sample there is no
8 wire.

9 In the second photo there's suddenly a red box appears
10 of some drug. I think Mr. Gunn talked about that during his
11 cross-examination.

12 This is the same bag in another photo with condoms and
13 pills. This is the kind of evidence that really calls into
14 question what is going on in Cambodia miles and miles way from
15 home, miles and miles away from the Constitution. This type of
16 staging of evidence would not happen here in the United States
17 hopefully. But here we have it in color, in -- with video
18 footage, government officials creating, manufacturing a rape kit
19 with ordinary household items and putting innocuous items that
20 individually might not appear incriminating into a bag to
21 somehow create the illusion that something really, really
22 horrific was going on. The condom wasn't in the bag. The pills
23 weren't in the bag.

24 If the Government's case is as strong as they profess
25 in their closing, then why are they doing this with the

1 evidence. That is a serious, serious concern.

2 As I stated, Agent Phillips claims that he -- during
3 the trial, pulled a wire out of the same -- very same bag.
4 There is no evidence of a wire. Where did it come from and why
5 is it here in court. Why is it here to inflame your passions as
6 a jury. If the evidence is as bad as the Government says, why
7 in the world do they need to pull these kind of magic tricks.
8 Why are they gilding a lily here if the evidence is as strong
9 and reliable as they want you to believe.

10 Again with respect to the distant oversight and no
11 accountability, remember the timing of the search in this case.
12 Agent Phillips and the Cambodian National Police arrived at Mr.
13 Pepe's house on June 17th. There was supposed to be a second
14 search the next day on June 18th, but the Cambodian National
15 Police did not show up so Agent Phillips and other people are at
16 the house waiting with members from these non-governmental
17 organizations.

18 The next day, the 19th, is when the search resumes but
19 in the meantime, in this intervening day when the house itself
20 is supposed to be sealed to protect the integrity of the
21 evidence, this is what we see. If you look at the green arrows
22 in this photo, you have the property seal on the top window or
23 door. On the bottom we see the seal on the door. But if you
24 look to the right -- I put my mouse over the red arrow -- the
25 door to the house is wide open, ladies and gentlemen. That --

1 that raises some concerns, that raises doubt about the quality
2 and the integrity of the evidence that's been presented to you
3 in court. We don't know what happened with that open door. But
4 we know the people were there.

5 We have already seen one piece of evidence being
6 staged and manufactured. There is another open door, another
7 unsealed door to the house. Again another unsealed door.
8 Somebody had access to this house before the search was
9 completed. It really calls into question the physical evidence
10 that we have here.

11 But in addition to the physical evidence, we also have
12 the forensic evidence that has been contaminated. Do you recall
13 when Mr. Pixley testified on direct examination that the first
14 rule of computer forensics was to cause no harm. That was the
15 first rule of computer forensics and those were his words on
16 direct examination, cause no harm.

17 But when we -- when Mr. Gunn questioned him and we
18 learned that someone somewhere had access to the thumb drive.
19 Someone was putting files, after the thumb drive had been
20 seized, onto the thumb drive. We have a photograph of Mr. Pepe
21 which Agent Galante confirmed was added on June 23rd.
22 Mr. Pixley stated that a photo was somehow deleted, added, and
23 deleted before the thumb drive was secured.

24 We also have this mysterious DOC.EXE program that
25 Mr. Pixley testified about on the thumb drive. He said the

1 functionality of the program was unknown but had been on the
2 thumb drive and then deleted.

3 So the question becomes who was contaminating this
4 evidence. Who was contaminating this crucial piece of evidence
5 and why. And can we really trust what -- what is being
6 presented in court. This is the photo that was found on the
7 thumb drive. This is the photo that was placed on the thumb
8 drive after it was seized. Somebody was accessing this
9 evidence, somebody was contaminating this evidence, somebody was
10 putting programs on this evidence and someone was putting files
11 on this evidence.

12 And the Government wants us to trust everything that's
13 been presented to you as if it's -- what did she say in
14 opening -- black -- I forget the term -- black and white. In
15 spades.

16 This evidence is not in spades. This evidence has
17 been contaminated time and time again. We have talked about the
18 physical evidence, we have talked about the forensic evidence.

19 There is also concerns regarding the testimony of the
20 alleged victims in this case. From a general standpoint, there
21 are serious concerns regarding the quality of the unusual
22 interviews and the factors that went into how the original
23 statements were obtained from these girls. We also have the
24 case agent again when -- when I.T. failed to identify a picture
25 of Mr. Pepe, when Mr. Gunn asked him why was that not included

1 in your report, we have the comment, "I usually don't report
2 negative findings."

3 Those are the kind of things that really give us pause
4 and should -- we ask that you seriously consider with respect to
5 the credibility of this evidence.

6 We also have the role of the non-governmental
7 organizations, and I'm going to talk about that. And there is
8 also specific concerns regarding the individual alleged victims
9 who testified, and we will walk through that just briefly.

10 Interview contamination and suggestivity.

11 We presented the testimony of Dr. Maloney. And I
12 would submit to you that Dr. Maloney was a professional,
13 credible expert in psychology. And his testimony was really
14 unimpeached. And what he talked about was really this common
15 sense concept of maintaining the integrity of the initial
16 interview. That the ideal goal was to get a spontaneous report
17 from an alleged victim in the victim's own words as to what
18 happened.

19 Dr. Maloney looked at the interviews, he looked at the
20 reports and he concluded that these interviews were completely
21 unreliable because the way that the girls were questioned, the
22 setting that they were questioned in, the environment that they
23 were questioned in, the unknown factors that went into their
24 interviews and their reports were -- were too -- I forget the
25 word he used. I think he used the word -- something like gross

1 contamination. Don't quote me on that. But it was along those
2 lines. That these interviews were so unreliable because of the
3 nature of the way the statements were obtained.

4 He also talked about the fact that there is also this
5 motion of cross-contamination when girls -- when people are
6 placed in the same setting, when they're living together, when
7 questions are asked to one person that -- claiming that another
8 person said so and so, that they have this whole notion of
9 cross-contamination of testimony. And that I think bears out
10 from the evidence in this case; that the interviews themselves
11 were really, really fatally flawed. And I just want to go
12 through a few examples of that.

13 We have first the T.C.xx interview. And I just want
14 to play a sample.

15 (Whereupon the tape was played for the jury)

16 MR. BROWN: Here is an example of a Cambodian
17 interpreter inserting the concept of blue eyes into the
18 interview of T.C.xx. T.C.xx, if you recall on my
19 cross-examination when I played the prior tape, never identified
20 the suspect as having blue eyes. We have a Cambodian
21 interpreter on his own inserting that concept. I think that is
22 evidence of contamination.

23 We also have the Vietnamese interpreter who is present
24 during the interview who worked for World Hope International.
25 And why is that. Ladies and gentlemen, why was there a

1 Vietnamese interpreter from World Hope International sitting in
2 on this law enforcement investigation.

3 First of all, the girls when they testified in court
4 spoke perfect Khmer. The Government would have you believe or
5 the witnesses would have you believe they learned Khmer in the
6 matter of the two years that they have been staying at the
7 non-governmental organization. I find that highly implausible.

8 Why is this Vietnamese interpreter who appears in all
9 the other interviews with victims, alleged victims, present and
10 contaminating the interviews themselves. And I think there is
11 clear unrefuted evidence of that.

12 I think it's compounded moreover by the fact that the
13 Government has Vietnamese agents, Vietnamese-speaking agents who
14 were present, who were available to interview the girls directly
15 in their own native language. Remember, Taekuk, the Vietnamese
16 ICE officer who claimed to be working for ICE who started
17 working in 2006? Are we to believe that he is the only
18 Vietnamese-speaking agent who works in the Bangkok office? Why
19 are they filtering the critical evidence through not one
20 interpreter, but two? So much has been lost in translation that
21 it's not -- well, I think there is evidence -- I think it's
22 clear that these interviews are unreliable.

23 The I.T. interview. Again, the same Vietnamese
24 interpreter from World Hope International. What relationship
25 does World Hope International have with ICE and why are they

1 playing such an active role in this investigation? They're not
2 law enforcement. Why aren't these girls taken to a quiet
3 setting, interviewed in a professional manner with a Vietnamese
4 interpreter or Cambodian interpreter like they had here in
5 court.

6 But look at the kind of setting, look at the kind of
7 dynamics that Dr. Maloney testified to. Look at how
8 unsupportive, unfriendly an atmosphere, how coercive the
9 atmosphere here is. And this is the example of the I.T.
10 interview.

11 (Whereupon the tape was played for the jury)

12 MR. BROWN: How many people are in that frame? And
13 those are the people we just see on camera. Who are all these
14 people and why are they here to question her? And why are they
15 questioning her in so many languages and why are they sitting so
16 close to her and why is she on this person's lap.

17 Again, it's perfectly understandable to sympathize
18 with people who are making these kind of allegations. We're not
19 saying that it's wrong to not care about the person that you're
20 interviewing, but when the stakes are this high, when the stakes
21 are this high in a case like this, I think it's important to
22 expect a professional, objective interview. Professional and
23 objective. Not this. People milling around, she's in someone's
24 lap, she is talking, it's being filtered in two different
25 languages at least.

1 (Whereupon, the tape was played for the jury)

2 MR. BROWN: Vietnamese interpreter who has clearly got
3 a stake in the outcome. She works for World Hope International.
4 The girls testified that she was her counselor at the NGO. She
5 is not an objective interpreter. She is certainly not objective
6 because the evidence shows that on more than one occasion she is
7 coercing responses and eliciting, filtering questions and using
8 language that was not used in the original English question.

9 We have the I.D. -- the supposed identification issue.
10 Again, remember, Dr. Maloney said that the goal is to get the --
11 the girl's response in her own words. And when they showed her
12 a picture of the person that they thought abused her, she said
13 no. But they didn't leave it at that.

14 (Whereupon, the tape was played for the jury)

15 MR. BROWN: That's not this man. Now, the Government
16 wants to make a big deal of the fact that -- or at least they
17 say that the photo that they showed was an outdated picture of
18 Mr. Pepe from 1985. Look at the Vietnamese interpreter saying,
19 "Look carefully, daughter, is he the one?" And it looks like
20 Mr. Phillips shows another picture to I.T. here.

21 (Whereupon, the tape was played for the jury)

22 MR. BROWN: He has got a long nose, it's not him.
23 They don't stop there. The questioning continues. Remember,
24 Dr. Maloney talked about the body language in the setting, how
25 people were leaning in.

(Whereupon, the tape was played for the jury)

MR. BROWN: "Don't forget to look closely, daughter."

(Whereupon, the tape was played for the jury)

MR. BROWN: I think one of the problems with this interview is that this is what we see on videotape. We don't know how many time that I.T. was interviewed prior to being taped. We know that she was at one of these shelters for some time. We know that all of these girls in this case have remained at shelters prior to their testimony in court today. So I think this raises serious doubt about the -- how these girls had been influenced.

Again, we have the K.S.x interview. Again, we have the interpreter from World Hope International. Again, we have the same type of suggestive and inflammatory language that did not exist in the original question. Then we have this interesting little snippet.

(Whereupon, the tape was played for the jury)

MR. BROWN: We have the agent leaving the interview, we have the interviewer leaving the interview, and the Vietnamese interpreter from World Hope International leaning toward K.S.x and telling her to make statements.

So what we have, ladies and gentlemen, is kind of the skewing of evidence and the skewing of testimony that is certainly not objective.

We have the case agent again stating that he does not

1 report negative findings. And did you notice that when all of
2 the witnesses were presented with their statements to
3 Agent Phillips, they all denied making the statements. It seems
4 that there is -- there is a serious skewing of evidence, and it
5 really, really raises doubt as to the reliability of the
6 Government's evidence in this case.

7 Again, if the case is as strong as they say, then why
8 are they bending reality at the edges here. Why are they
9 shifting things around and why are they manipulating the
10 evidence the way that they are, the way that has been
11 established.

12 Again, we talk about the role of the non-governmental
13 organization in this case. It's not quite clear -- it hasn't
14 been quite made clear their role in this investigation, but I
15 think it has been made clear that they had -- they did take a
16 lead role in this case. The NGOs were present during the
17 search. Their representatives were present during the
18 investigation. The girls had have been in their custody and
19 control for the past two years, despite the fact that there is
20 strong evidence that the parents are begging to have their
21 children returned to them, so much so that they had to seek the
22 assistance of -- from Mr. DeMontero and Khieu San, members of
23 the Cambodia Parliament.

24 The Government wants to make a big deal out of the
25 phone calls that Mr. Pepe made to Mr. DeMontero to kind of cast

1 his statements in a sinister light. But I think it's clear that
2 there is a serious concern about the role of the NGO's and the
3 role they played in this investigation and the impact their role
4 has had on the quality of the evidence here.

5 But it's not just the fact that -- contrary to what
6 the Government says, it's not just the fact that the interviews
7 themselves were suggestive. The other evidence really raises
8 doubt about what the girls said occurred while they were at
9 Mr. Pepe's house. The demeanor of the girls in photos taken at
10 or near the time of Mr. Pepe's arrest, their statements that
11 have been attributed to them raise serious concern about what
12 they say happened.

13 This L.K.xxx with her mother at the birthday party in
14 June of 2006. The girls certainly don't look like they are
15 abused or traumatized. And I don't want to overstate the
16 significance of that, but I don't think that we can set common
17 sense aside here and say that I think common sense would say
18 that if a person is being brutally abused like the prosecution
19 is describing occurred, you would not expect to see series and
20 series of these kind of photos with this kind of demeanor in
21 them. And I think that that casts doubt on the factual version
22 of events. This is not a tortured scene here, ladies and
23 gentlemen.

24 Let's talk about the specific alleged victims in this
25 case. L.K.xxx. She testified that the rape occurred three

1 months after she moved into Mr. Pepe's house, but the photos --
2 there are some suggestive photos that are dated in November.
3 She also told Mr. Pond that Mr. Pepe was good to her; although
4 she denied making that statement in court. But if you look at
5 the Defense stipulation, it's clear that she made a statement
6 that Mr. Pepe was good to her.

7 There's also some question as to her age. The
8 Government claims that the family book shows that she was born
9 in 1993. But her mother testified that she was born in the year
10 of the goat, which is 1991. She did not report any of this --
11 what they claim now is this brutal abuse. L.K.xxx did not tell
12 her mother about this. She did not tell her teacher, her tutor.
13 But not only that, she told -- according to her mother, L.K.xxx
14 told her mother not to come to the house to visit her. And that
15 when L.K.xxx went to visit her mother in the province, she
16 wanted to go back to Mr. Pepe's house right away.

17 Moreover, L.K.xxx, after her mother was kicked out of
18 Mr. Pepe's house -- which kind of defeats the Government's
19 grooming theory that he would kick out the parent who he is
20 trying to groom -- after Ly Kim Eng left the house, L.K.xxx
21 asked to remain behind. I think that that raises some serious
22 doubt as to what the girls are saying happened now. It's just
23 not consistent with reality, ladies and gentlemen.

24 The teacher testified that the girls did not seem
25 unhappy, they did not act afraid of Mr. Pepe, that they treated

1 Mr. Pepe like a father, that they hugged him when they saw him,
2 which is consistent with the positive demeanor that is shown in
3 the photographs. It's only when they come to court after being
4 in the custody of this NGO for two years that suddenly all of
5 the positive aspects are not -- are not testified to.

6 Again, S.R.xxx and S.S.xxx, their mom said that they
7 were happy, they were playing, they were normal, they did not
8 act unhappy in any way, which is corroborated by Mao Chann
9 Thorn, the teacher.

10 Again, the statements to James Pond that Mr. Pepe was
11 good to them.

12 We have S.R.xxx's interview during -- her demeanor,
13 which seems inconsistent with the kind of abuse that has been
14 described, the kind of repeated brutal abuse that has been
15 attributed to Mr. Pepe. You do not expect the girls to be
16 laughing in an interview, smiling in the photos, wanting to stay
17 at the house.

18 The Government tried to characterize this whole scene
19 as if somehow they were prisoners in Mr. Pepe's home. But the
20 evidence has made it clear that the girls are definitely free to
21 leave and come back. They went to school. They went to their
22 parents' home for the weekend.

23 It's just not quite jibing what you would expect to
24 find in a situation where someone is supposedly brutally abusing
25 and torturing these girls, for them to want to stay there and

1 not go home with their parents.

2 And the Government's argument that they didn't want to
3 return to the slums of Cambodia is just not persuasive. That a
4 person who has a choice between brutal abuse and poverty would
5 opt for this -- this type of characterization that the
6 Government has described, it just does not jibe with common
7 sense.

8 The Government promised you that they were going to
9 introduce the testimony of Wendy Freed in their opening
10 statement, an expert in child psychology, to somehow explain
11 this mysterious dynamic. But there is no Wendy Freed. There is
12 no expert testimony to tell us that this is some sort of a
13 learned helplessness or something like that. There is no
14 evidence of that. There is no evidence that these children
15 somehow capitulated to this type of situation when they had the
16 opportunity to go home, they had the opportunity to report and
17 they didn't.

18 And that -- ladies and gentlemen, don't set your
19 common sense aside when you are considering this case, despite
20 the seriousness and the graphic nature of the allegations. We
21 ask that you don't set your common sense aside. Common sense
22 would say that somebody would have said something to somebody.

23 K.S.x. K.S.x denied being Sang's niece on the stand.
24 I don't know if you remember that. I asked her that question.
25 In fact, the evidence has born out that, in fact, she was Sang's

1 niece. Why did K.S.x deny being associated with Sang during her
2 testimony in court? What is K.S.x hiding?

3 Again, I think it's perfectly natural to want to
4 empathize and identify with the alleged victims in this case,
5 but I think the reality of the situation is a little bit more
6 complicated than the Government wants you to believe. And
7 these -- these -- the girls -- I mean, there are some issues
8 there that I think are relevant to the case.

9 K.S.x had other sexual experiences. And that's -- and
10 I'm not saying that to somehow smear mud on K.S.x, but I think
11 it's significant when Dr. Watson is examining -- doing a medical
12 examination a year after the fact, a year after K.S.x has been
13 in Thailand and makes graphic medical findings, but we learn
14 that K.S.x has other sexual experiences. I think there's a
15 question when they're trying to attribute that to Mr. Pepe. So
16 it's not quite as if, you know -- it's not quite as simple or
17 idyllic as the Government wants you to believe.

18 This is a completely different culture, ladies and
19 gentlemen. There is a lot of different, unknown factors that
20 have gone into this equation. It is not simple to say that
21 these horrible things happened and Mr. Pepe is responsible.
22 It's not just that easy.

23 NTDx, the same thing. I believe it was NTDx -- and I
24 could be mistaken -- who talked about this mysterious Mr. O who
25 she had prior sexual experiences with, prior to being evaluated

1 by Dr. Watson. So when the Government talks about, you know,
2 the graphic explanations and the graphic injuries that were
3 reported by Dr. Watson and having to have a vagina sewn up, it's
4 a little bit more shaded when you learn that NTDx, K.S.x had
5 other prior sexual experiences prior to seeing Dr. Watson.

6 It's just not so simple. It's just not an easy --
7 easy -- you know, this isn't a slam dunk situation, ladies and
8 gentlemen. It's just not that easy. It's much more
9 complicated.

10 And I believe it was NTDx who testified that Ty Lynn
11 was in the room at the time of the alleged incident, but that
12 was contradicted by some of the other witnesses when she said
13 that she was alone at the time. So there are inconsistencies
14 that bear on the credibility of these witnesses, ladies and
15 gentlemen, that cannot be easily overlooked or easily swept
16 aside.

17 T.C.xx. Again, there's issues with the interpreter.
18 We have Sang's description of some of these girls as
19 prostitutes. I think Sang said, "We were all prostitutes."
20 I.T. testified she was at Mr. Pepe's house for one week. The
21 Government says that it was a month. I don't recall that being
22 her testimony. I believe the evidence showed she was there for
23 one week. According to I.T., the other girls were teasing her
24 because she didn't want to massage Mr. Pepe. And this was on
25 the massage table that the girls testified were non-sexual

1 messages. I.T. was teased by the other girls which she admitted
2 on the stand. The other girls denied teasing I.T.. why do we
3 have this inconsistency here about this kind of fact.

4 I think -- I think -- I.T.'s testimony, I think, calls
5 into question the credibility and reliability of the testimony
6 of the other girls; that they're teasing her for not wanting to
7 participate in these massages.

8 The Government talked about Mr. Pepe's letter to his
9 sister. And you will have that in evidence. I ask that you
10 look carefully at that letter and read that all in context. It
11 certainly describes massages with some potential inappropriate
12 touching, which might be what I.T. is describing here. But
13 that's -- that's a far cry from brutal bloody rape, ladies and
14 gentlemen.

15 There is also photographs -- I.T. testified that she
16 wasn't happy in some of the pictures because she didn't want
17 Mr. Pepe taking her pictures, but in the candid shots she looks
18 happy. And you will be the judge of that evidence for
19 yourselves, ladies and gentlemen. I mean, it's interesting that
20 they all somehow recharacterize their emotion but it's not
21 really borne out by the photos themselves. The photos speak for
22 themselves.

23 This is my third and final over-arching point is that
24 there is really some major problems with the Government's theory
25 and their prosecution. First of all, the forensic evidence

1 isn't really there. I will talk about that. I am going to talk
2 about this whole concept of grooming that they've developed,
3 that they introduced Mr. Clemente to testify about, which really
4 doesn't make a lot of sense when you look at it. There's
5 examples of government over-reaching.

6 You remember the map that was testified to with the
7 back of the map said "child sex abuse is a crime" and the
8 Government introduced this evidence to somehow show that
9 Mr. Pepe was aware that child sex abuse is a crime and they
10 wanted to use that as incriminating evidence. But when you
11 unfold the map, there's a thousand different items on the map
12 just like you see -- it's an advertisement for the city of Phnom
13 Penh. And that just happened to be one of many, many
14 advertisements on that map.

15 So you see the quality of the Government's evidence.
16 The kind of evidence that they're introducing at this trial is
17 really questionable, especially in light of the fact that --
18 well, it calls into question why they're presenting you this
19 type of evidence. They want to ride the wave of emotion against
20 Mr. Pepe so that every item that is recovered in his house, as
21 innocuous as it is in retrospect, suddenly looks like he is
22 running a torture house there when that is not the case.

23 The same with the date rape drugs that the Government
24 testified or commented on in their opening statement. They
25 called these the date rape drugs. And then they introduce the

1 testimony of this pharmacist. And now they're calling Tylenol
2 with codeine administered in adult quantities. Well, the
3 codeine component could be used to -- as a sedative. It's
4 Tylenol with codeine. The other drugs that were found in the
5 house are consistent -- and we'll talk about that -- with
6 Mr. Pepe's well-documented sleep disorder and anxiety.

7 And we will talk about the photos.

8 Well, let's go back. There is no forensic evidence.
9 There is no DNA, no semen samples. The girls described things
10 like waking up in a pool of blood. I mean, this is graphic,
11 graphic, shocking type of testimony. But where are the
12 blood-stained sheets. The sheets are here in court. The towels
13 I think have been seized. Where are the blood stained sheets.
14 Where are the blood-stained towels. Where is there evidence of
15 blood. Where are the torn panties. Where are the blood-stained
16 panties. The type of thing you would expect to find in a
17 situation like this.

18 Again relating back to Dr. Watson, she comes in court
19 and she testifies about things like seeing, you know, injuries
20 gaping entrances. Her original reports don't use the word
21 gaping, but when she comes into court she is using these
22 emotionally charged terms. And I think most significantly,
23 Dr. Watson didn't photograph any of her observations, she didn't
24 document any of her findings. She should have -- if what she
25 saw was there, she should have photographed it, she should have

1 sketched it, she should have identified it so we could have some
2 reliable evidence to consider in court and not this kind of
3 inflammatory testimony that was presented.

4 And why didn't Dr. Watson want to speak with the
5 Defense team when we flew all the way to Cambodia to talk with
6 her, among other things. How come she didn't want to talk with
7 us. She met with the Government. Dr. Watson is supposed to be
8 an objective physician, documenting her findings in an objective
9 manner, but she doesn't want to talk to the Defense.

10 What's -- what's -- why? This evidence, according to
11 the Government, is overwhelming. What are they afraid of?
12 Let's just put it all out in the open and look at it and discuss
13 it and analyze it. But they want to shade it, they want to hide
14 it, they want to manipulate it, and then they want to present it
15 to you in the most inflammatory manner possible.

16 Grooming. The Government brought in this person,
17 Special Agent Clemente. Agent Clemente is a career FBI, career
18 law enforcement. He used to be a prosecutor. And if you really
19 think about it, having Agent Clemente testify was like having
20 one of the prosecutors in this case testify. Everything he said
21 was consistent with grooming. The person is a teacher. He
22 pretends to be grooming. If he worked for a Boy Scout, he could
23 be grooming. If he is nice to children, either he has got an
24 ulterior motive or not. What did Clemente really add to the
25 discussion? Not much.

1 The problem is -- and this is really the fatal problem
2 with the Government's theory -- the Government can't really
3 explain the positive aspects of Mr. -- of Mr. Pepe. They can't
4 explain the fact that he has got a legitimate interest in
5 education and it's not just children. They can't explain the
6 fact that he is sending these girls to school and they can't
7 explain why they look happy in the photos. They can't explain
8 why the parents aren't accusing Mr. Pepe of this, why the
9 parents say all these good things about Mr. Pepe, how he is
10 compassionate, how he is supportive, how he sent the kids to
11 school, how he sent the mothers rice.

12 They can't explain that away, so they put Clemente on
13 the stand to say well, all that stuff, that's just grooming.
14 That's just a person taking advantage of people's poverty so he
15 could have access to children. That he is setting the parents
16 up so he would buy these children from these poor people from
17 the slums of Cambodia. That's kind of a skewed lens that they
18 are looking at here, ladies and gentlemen.

19 First of all, the parents -- you saw those
20 depositions. The parents never sold those girls to Mr. Pepe.
21 You saw how credible those parents were in their depositions.
22 They weren't lying about the circumstances of the children going
23 to live with Mr. Pepe. It wasn't grooming. If you're living --
24 and this is really the flaw in the logic. If you're living in a
25 country where you can buy prostitutes and sex for a dollar, why

1 do you need to groom?

2 Agent Clemente -- his analysis was totally not even
3 based on the dynamics of a culture that was thousands of miles
4 away. I mean, there really, really is no need to groom if
5 that's the reality. But they need that kind of testimony to
6 somehow explain away all of these other things that don't make
7 any sense. The girls looked happy, their parents were happy, no
8 one complained about abuse.

9 Again, where is Wendy Freed to explain this away?
10 They used Clemente, but he is not even a child psychologist. He
11 is a career prosecutor, FBI examiner. Where is Dr. Freed?
12 Where is the psychological testimony about that? It really
13 defies common sense and there is really no alternative
14 explanation. I mean, there is a completely innocent
15 explanation. In the face of all this overwhelming evidence that
16 the Government has, there is a completely alternative theory
17 that makes as much sense as what the Government is describing.

18 Well, they want to say that Mr. Pepe's school supply
19 distribution program was really just so he could have access to
20 kids, that he had -- I forget the word that's -- the prosecutor
21 used. He had an interest in children.

22 But, I mean, if you really consider the testimony, it
23 really wasn't just an interest in children, it was an interest
24 in education generally. Mr. Pepe was a professor at a local
25 university. That's how he met Sander -- I'm sorry -- that's --

1 that was kind of the common ground he had with Mr. Sander and
2 that's why Mr. Sander wanted to introduce him to all these
3 important Cambodian officials, because of his standing at the
4 university, his interest in education.

5 Mr. Pepe was also married to Sander wife's sister but,
6 I mean, the interest in education, I think, is bona fide and
7 well-established by the evidence in this case. So it's not --
8 once again, the Government is oversimplifying it by saying well,
9 he wanted to go out to the remote villages of K-11 so he could
10 be near a bunch of, you know, children who were former
11 prostitutes. I don't think that that's the case.

12 You heard from Father Son. It was Father Son's idea
13 to go to K-11, it was not Mr. Pepe's.

14 Some of the distribution sites were remote, which is
15 inconsistent with the theory of Mr. Pepe wanting to have access
16 to children. That theory just does not make any sense.

17 Not only that, again, there was an adult component to
18 the whole program itself. So, you know, I think it's a gross
19 oversimplification to say well, he is distributing books to
20 kids; therefore, he is grooming them. And when he gives them
21 books and candy and a dollar, he is just setting them up to
22 molest them. That just doesn't fly, considering the weight of
23 the evidence in this case and evidence from people.

24 You got Father Son whose testimony was credible. You
25 got Khieu San, a Parliamentary official who talked about his

1 involvement with Mr. Pepe. You've got Ung Huot, the former
2 Prime Minister of Cambodia. You've have got Sander DeMontero.
3 These are people with no -- no real dog in the fight, so to
4 speak. They don't have to fly all the way from Cambodia to
5 testify on behalf of a man who is accused of brutally raping
6 seven girls in his house. They didn't have to do that.

7 But the fact that those people came here to talk about
8 what's really a small component of the case, but to show that
9 this was a legitimate program and not some nefarious scheme on
10 behalf of Mr. Pepe I think says a lot.

11 Disabled children. There is pictures of Mr. Pepe at
12 the disabled children's school. Is it the Government's theory
13 that because he is here he now wants to molest people in
14 wheelchairs? It just doesn't make sense. These were
15 legitimately organized programs executed -- I mean, he went
16 there with his family. He went there with his friends. He went
17 there with high-ranking government officials. He is there with
18 his wife, his wife's sister, Sander's wife, Sander's children.
19 I mean, the whole theory that he is somehow grooming the
20 children at the school for future abuse is -- really, really
21 does not jibe with reality.

22 Like I said before, it seemed like the Government is
23 really, really over-reaching here in this case.

24 We talked about the map, the newspaper clippings that
25 they tried to introduce. They took a couple of articles out of

1 context to somehow attribute some nefarious motive on behalf of
2 Mr. Pepe. But when Mr. Gunn puts the whole thing in context, he
3 has got a stack of newspaper clippings having do with local
4 Cambodian affairs.

5 He talks about Tylenol with Codeine, reconstruction of
6 reality with everyday items.

7 I mean, if the evidence is as strong as the Government
8 wants you to believe, then why are they doing this type of thing
9 with the evidence?

10 We have got Mr. Pepe's letter to his family. There is
11 certainly some emails that appear suggestive, but that doesn't
12 really prove anything when you put it in context. We are
13 certainly not saying that Mr. Pepe is a saint. But to take all
14 these things out of context and to weave some kind of -- the
15 type of story that has been woven is not really accurate and is
16 not really fair.

17 The drugs. Well-documented sleep disorder.
18 Prescription for Temazepam. Mr. Gunn elicited that if Temazepam
19 wasn't working, then Rohypnol would be the next logical sleeping
20 agent to use. This is another example of the Government being
21 unable to or not willing to kind of accept the reality of
22 Cambodia and our applying this lens as if all of these things
23 occurred in the U.S. They're asking the pharmacist well, you
24 know, if you were in the U.S. how would you prescribe this, what
25 would you do here and how would a person go about getting this

1 type of drug. Isn't Rohypnol illegal in the United States. I
2 mean, that's really interesting if this was a United States case
3 and perhaps it would be persuasive if this was the United States
4 and Mr. Pepe had in his house morphine, Rohypnol, which is
5 illegal. This isn't the United States. This is Cambodia.

6 Our investigator, Keith Williams, went to the local
7 pharmacy and bought Rohypnol without a prescription for \$5. The
8 agents did the same thing. All of these things were readily
9 available. And if you really think about it, remember it was
10 Sang, Basang, who testified that she was acting as Mr. Pepe's
11 nurse and that she went out to the big store and bought these
12 things. Well, she didn't consult with Mr. Pepe, she didn't get
13 a prescription. She thought -- she went and got the things that
14 she thought was best for Mr. Pepe's documented sleeping
15 problems.

16 Remember, Mr. Pepe would call Sang at night because he
17 trusted her, they had become friends. He would call her when he
18 couldn't sleep and she would come by with all these teas and
19 concoctions and drugs that she got herself from the big store,
20 from the local pharmacy, corroborated by Mr. Williams and the
21 case agent. These drugs are readily available.

22 And they want to make a big deal out of Tylenol with
23 codeine. They want to make a big deal out of morphine.
24 Well-documented medical problems. Also keep in mind that
25 L.K.xxx described being supplied an ash-colored powder in a

1 package. And they said that that was the date rape drug. There
2 is no evidence of any ash-colored powder in a package found in
3 Mr. Pepe's house. No evidence of that whatsoever.

4 If you really consider the testimony of the
5 Government's pharmacist, the Government's pharmacist was talking
6 about codeine separate from Tylenol with codeine which was found
7 in the house. Adult dosage -- prosecutors asking about all
8 these adult dosages but, you know, she said that most of the
9 items that were found in Mr. Pepe's house had a -- a delay, and
10 it took 30 to 40 to 60 minutes for any of these items to put
11 somebody out. So the evidence just doesn't really match up when
12 you really, really look carefully at it.

13 Let's talk about Sang because the Government talked a
14 lot about Basang, Sang. And she really is the key to the
15 Government's case. And the Government highlighted that in
16 their -- in their closing. Sang is really kind of the wild card
17 here. Basang is a person who describes purchasing girls for
18 Mr. Pepe, going out to the provinces and finding young girls to
19 bring back to the home. But if you compare Sang's testimony to
20 the testimony of both Ly Kim Eng and Kumlang -- yes, Kumlang,
21 the mother, it doesn't match up. Sang says that she went out,
22 found these people working at a vegetable stand, said, "Let me
23 buy your daughters for \$30." The parents, "Okay, go ahead and
24 take them." I mean I'm oversimplifying, but that's basically
25 Sang's testimony. "Let me buy your daughter." "Okay."

1 But if you look carefully, if you listen carefully to
2 the testimony of Kumlang and Ly Kim Eng, they don't want to sell
3 their daughters to Mr. Pepe. They didn't sell their daughters
4 for \$30 to Mr. Pepe. They have been wringing their hands over
5 their inability to have access to the children because they have
6 been with the NGO for two years and everyone they meet,
7 especially Kumlang, they are begging, pleading. "Help me get my
8 daughters back." They are contacting the Human Rights
9 Commission. They are contacting Sander DeMontero. They are
10 contacting Khieu San, "Help me get my daughters back from the
11 NGOs, they have been brought to America and they never even
12 consulted us."

13 They want to minimize -- the Government is trying to
14 minimize the role of the parent in this whole case because their
15 testimony doesn't jibe with the reality that they are trying to
16 construct. Sang didn't buy these children. The mothers say
17 that they want it, they certainly were aware, you know, that
18 they were living in dire conditions, they certainly were aware
19 that they were living in poverty, they certainly were aware that
20 education afforded opportunities for their children.

21 But the Government, you know -- government's whole
22 theory when they are cross-examining the parents at the
23 deposition, you know, it just doesn't make sense. You live on a
24 dirt road and you don't have running water. That's why you sold
25 your daughter. Ly Kim Eng was certainly aware that she lived in

1 poverty but she didn't have the same type of -- she didn't
2 appear ashamed of that.

3 Same with Ly Kim Eng -- Kumlang. So, I mean, there is
4 this whole cultural lens that is somehow missing the reality of
5 what's happening here. These are parents who love their
6 children, who want opportunities for their children, who are
7 concerned about their well-being. They didn't sell them to
8 Sang. Sang is not telling the truth about that.

9 Sang is a person with the most to lose. She is the
10 person who is living in these nightmarish conditions at Prey Sar
11 prison. She is the one who talks about the torture, the people
12 dropping dead from AIDS, from sleeping on a cement floor, eating
13 pig rice, near starvation practically, no blanket, no cot. Sang
14 is the person with the immunity agreement, Sang is the person
15 with the letter from the prosecutor saying, you know, if --
16 what's the language -- we'll notify the appropriate authorities.

17 She certainly has the expectation of a positive
18 recommendation from the prosecutor. Now, what weight does the
19 word of a U.S. official have with the Cambodian National Police
20 and her jailers at Prey Sar prison? I mean that's debatable.
21 But somehow, some way, they got Sang out of Prey Sar for the
22 deposition.

23 So there is certainly -- it's certainly clear that the
24 Government officials in this case have quite a bit of influence
25 with the Cambodian officials. More so than the Defense, that's

1 for sure. And that's what Mr. Pepe is talking about on these
2 phone calls, how unfair this whole thing is because his defense
3 team can't even -- doesn't have any access to Cambodia so he has
4 got to have his friend meet his defense team in Cambodia to try
5 to -- to contact witnesses, to investigate, to defend this case.
6 And the Government has all these resources, all these contacts,
7 all these connections. They can bring Sang out of Prey Sar for
8 a depo. And she said -- Sang said that she would do almost
9 anything to get out of Prey Sar.

10 So it's easy enough to call Basang untrustworthy and
11 unreliable, but I think the evidence is clear if you compare the
12 testimony of the Sang, the testimony of the parents, it's clear
13 that the parents are much more credible and much more reliable
14 than Sang.

15 Phone calls. The Government in its rebuttal case
16 wants to introduce phone calls from Mr. Pepe to Sander as some
17 evidence of attempting to bribe and influence the parents of
18 these girls. Mr. Pepe himself says we're not saying anything
19 wrong. We can't use power to do stuff. It's not really fair.
20 My government is not fighting fair. That's what Mr. Pepe is
21 saying in the phone calls. He is saying, "Sander, help me out
22 because I am being charged with a crime that occurred thousands
23 of miles away in Cambodia. I'm stuck here in Los Angeles, and I
24 can barely defend myself. I can't even talk to witnesses. So,
25 Sander, I'm going to send some money to my wife. She is going

1 to pay for your plane ticket to fly from Australia to Cambodia.
2 Will you meet my defense team?" That's what these phone calls
3 are about. "Will you meet my defense team and help them so they
4 can help me? "There is nothing nefarious. There is no motive.
5 Not trying to bribe anybody.

6 You heard Sander DeMontero. His testimony was
7 corroborated by the parents. Mr. DeMontero went to meet with
8 him at Prey Sar and afterwards the parents said they didn't
9 trust anybody. They just need help getting the kids back. They
10 needed help with food. They petitioned Sander to contact his
11 friends at the Human Rights Commission to help them. And that's
12 all there was to it. There is no evidence of bribery. There is
13 no evidence of undue influence. No evidence of suggestiveness.
14 Sander's testimony was directly corroborated by the parents in
15 this case.

16 IJM is trying to ramrod this thing through. I mean,
17 we have these NGO's, these quasi governmental officials who
18 appear to have quite a bit of influence in Cambodia but aren't
19 really accountable to Khieu San or Parliament. It's not quite
20 clear what the relationship is in the country. We certainly
21 know that they have noble objectives. They are trying to help
22 people who have been victims. But in this case, it's just not
23 quite clear that they -- that they are wearing the white hats,
24 especially given the fact that the parents are begging, begging
25 to have the kids back.

1 There is no explanation as to the relationship between
2 the NGOs and the parents and why the parents only see the kids
3 once a month. So there is a lot of complexity to this case.
4 There is a lot more complexity, there is a lot more nuances than
5 the Government wants you to believe.

6 The Government has shown very graphic photos, and
7 there is no denying that those photos and those pictures are
8 graphic. They are highly sexual and highly suggestive. We are
9 not denying that. But, again, take a step back, look at it,
10 analyze it, consider the evidence and really put this in
11 context.

12 In the series of with Nap and LKx I think the evidence
13 has been established that Ngoc, according to Sang, she is 20 or
14 21, so Nap is not a minor in those photos. We know that for a
15 fact. Medical records.

16 If you look at the photo of L.K.xxx, again it is
17 highly suggestive, but there is no evidence of sexual
18 penetration or rape. If you look at the photo of Mr. Pepe in
19 that photo, it looks like he has been drugged. And if the
20 letter he writes back to his sister he says he is not even sure
21 how old L.K.xxx is. And I think that that's a significant fact.

22 Remember Seng Lida. Remember when Seng Lida
23 testified. She is 20 years old but she was asked are you a
24 minor. Seng Lida is 20 and she looks like she is 12 years old.
25 There is a cultural component that is really important to

1 consider here.

2 And the Government introduced the testimony of
3 Dr. Berkowitz to say that well, these girls are definitely,
4 based on my knowledge of sexual maturity ratings -- are clearly
5 pre-pubescent. But Dr. Berkowitz's testimony is based on,
6 number one, this flawed notion of relying on the Tanner scale to
7 predict age, which Tanner himself -- which we listened to on
8 cross-examination -- Dr. Tanner wrote a letter saying that
9 that's not a good methodology, it should not be used to predict
10 age. Berkowitz as well, you know, it's not the Tanner scale,
11 it's new and improved sexual maturity rating.

12 And then she talked about the Singapore study,
13 remember? Dr. Berkowitz said that the Singapore study is the
14 basis for her belief that -- that you can predict or tell from a
15 cross-racial standpoint the age of southeast Asian woman. But
16 the Singapore study -- and she admitted this on
17 cross-examination -- the Singapore study did not use Cambodian
18 women or Vietnamese women as samples. So her testimony is based
19 on this flawed premise that she can predict age based on these
20 limited factors.

21 And the study itself is flawed. I mean, it's
22 certainly clear that -- that the Cambodian girls in this case
23 look young but you saw Seng Lida. She looked young, too, and
24 she's 20. And Pepe said that he's not sure how old she is.

25 And the person, Ni, that is in the photograph of the

1 bondage, which the Government keeps showing as an example of how
2 these alleged victims were tied up, if you look carefully at Ni
3 and consider that evidence with respect to Dr. Berkowitz's
4 testimony, remember, Dr. Berkowitz said that Ni had evidence of
5 having a shaved pubic hair, shaved pubic region. Her age is not
6 clear.

7 And again, there is this whole faulty reliance on this
8 Singapore study to not even consider Cambodian ethnic factors or
9 the study, the factors that go into predicting this is so flawed
10 that you can't predict someone's age or estimate someone's age
11 based on the photos, specially when you have this kind of
12 cross-racial situation. You can't apply U.S. standards to
13 people living in Cambodia. Their diet is different, they have
14 different ethnic, genetic makeup. There is a lot of different
15 factors that affect sexual maturity.

16 And when you have Ni, who is definitely -- according
17 to Dr. Berkowitz, has evidence of sexual maturity, pubic hair
18 and shaved pubic hair, certainly looks bad. But the most
19 graphic photos in this case are graphic photos of Ni. The
20 penetration, ejaculation that they are attributing to Mr. Pepe.
21 We don't know how old she is.

22 And, again, I mean, if you look at that series of
23 photos, which is the worst photographic evidence in this case,
24 they're saying it's Mr. Pepe, but we don't see his face. And
25 then they brought in a Dr. Craft to do this whole thing with

1 mole identification and stuff and say that, well, the mole
2 patterns in the known photos are the same as the known mole
3 patterns in this series of photos, inferring that it's Mr. Pepe.

4 But, you know, you heard from Dr. Bennett who trained
5 Dr. Craft who said that, you know, you can't rely on
6 teledermatology. It's not widely accepted, number one. That
7 are there are a ton of other lesions that Dr. -- that were
8 similar to the ones that Dr. Craft circled that were not circled
9 by Dr. Craft that are -- that could have easily been the same --
10 same type of mole. I mean, that kind of evidence isn't really
11 that persuasive when you think about it in light of
12 Dr. Bennett's testimony.

13 I guess in a way -- and this is kind of what I was
14 alluding to in the beginning of my opening. This case is really
15 a test of -- of our ideals, if we think about it. It's a
16 serious test of our ideals. It's almost like an experiment.
17 You have on the one hand a foreign country who does not share
18 the same cultural values, the same legal concepts that we take
19 for granted. Presumption of innocence, burden of proof,
20 reasonable doubt. These concepts are ingrained in our cultural
21 identity. These are the things -- these are bedrock concepts
22 that we take for granted.

23 And we're -- there is somehow this overlay. This case
24 is somehow overlaying these two competing ideals. And I don't
25 think that it's easy. This is not an easy case. This is not a

1 slam dunk case. The Court talked about -- when we were
2 selecting the jury, about the significance of our democracy and
3 the role of the jury in the democratic process, and I think that
4 that is so true. Because if you think about it, it's you,
5 ladies and gentlemen, who are really the gatekeepers, and that's
6 what the whole system is designed for, that the prosecutors
7 don't get to automatically check a box and find Mr. Pepe guilty.
8 They bring in people from the community who have no interest,
9 who are completely objective, with varied experiences and
10 background, to consider and weigh the facts and the evidence.
11 You are not beholding to the prosecutor, you are not beholding
12 to the Defense, you're not beholding to the Court.

13 I mean, this is really -- the criminal justice system
14 is really about -- it's one big quality control process. And
15 you are the gatekeepers of that process, because it's your
16 decision that is so important and so significant. And it's even
17 more so in a case like this. It's even more so in a case like
18 this where they're bringing in foreign witnesses, foreign
19 evidence, foreign procedures, questionable evidence,
20 questionable witnesses, questionable interviews.

21 We ask that you hold the Government to its high burden
22 of proof in this case. We ask that you hold the Government to
23 its standards. Our standards. Not Cambodian standards. U.S.
24 standards. The Government has not met its burden of proof in
25 this case. And we ask that you return a verdict of not guilty.

1 Thank you.

2 THE COURT: Thank you. One last time, don't talk
3 about the case or form or express any opinions about the case
4 until it's finally submitted to you. We will take a 15 minute
5 break and then hear the Government's closing.

6 (Recess taken)

7 (Jury Out)

8 THE COURT: What do counsel want me to do with the
9 alternate? Do you want me to release him and have him stay on
10 call if for some reason we need him?

11 MS. DONAHUE: That's fine with the Government,
12 Your Honor.

13 THE COURT: Mr. Gunn? Mr. Brown?

14 MR. BROWN: No objection.

15 THE COURT: Are we ready?

16 MS. DONAHUE: Yes, thank you, Your Honor.

17 (Jury In)

18 THE COURT: All right. Everyone is present.
19 Ms. Donahue, you may proceed.

20 Government's Closing Argument

21 MS. DONAHUE: Thank you, Your Honor.

22 Ladies and gentlemen, the defendant chose Cambodia,
23 not the investigators. He is the one who chose to fly 9,000
24 miles to the other side of the planet, and he is the one that
25 chose to commit the crimes over there, not here. So please keep

1 that in mind as you evaluate the complaints about how far away,
2 the different procedures, how difficult this is. Nobody from
3 the United States forced had him to go. It was his decision to
4 go. And not to go for a little while but to go and to rent a
5 house and stay there for a long time.

6 And Cambodia is a place where on the map you have to
7 be told sex with children is a crime. Not inside some internal
8 ad that you have to unfold the map. When you buy the map in
9 Phnom Penh, it says, "Sex with children is a crime." You have
10 to be told that.

11 When you come to Los Angeles, when you go to
12 San Francisco, when you go to most cities in the United States,
13 you do not pick up a map that says "Sex with children is a
14 crime." Remember that. We don't have to be told.

15 There is a reason some people -- not everyone by any
16 stretch of the imagination -- but there is a reason some people
17 travel to Cambodia.

18 He chose a country. He chose a country where, as
19 Father Un Son told you, they have a terrible, terrible problem
20 with child exploitation. Remember what Father Un Son said about
21 Svay Pak, which is where the defendant wanted to go. He chose
22 the children's programs at the parish. Father Un Son said they
23 went to Svay Pak. What is in Svay Pak? Brothels. Who are in
24 those brothels? Children. Cambodia is a country that has a
25 problem with sex with children. And he chose to go there.

1 It is also a country where, yes, it is apparently
2 legal, perfectly easy to buy Rohypnol. The ICE agent did it and
3 the Defense investigator. Walked up to a pharmacy on the street
4 and purchased Rohypnol, the date rape drug which, as you heard,
5 is not legal in the United States. It is legal in Cambodia.
6 You can get it. The Defense investigator got it. The agents
7 purchased it. The defendant purchased it. He had it at his
8 house. He had Rohypnol and he had a lot of other sedatives.
9 His choice. His choice to of move there. His choice to go to a
10 place where you can get Rohypnol on the streets.

11 Now, his complaints about the investigation and how
12 difficult it is are ironic at best in light of the Defense
13 witnesses who came in here and testified. Sander DeMontero
14 came, and first of all, didn't even tell you on direct
15 examination that he is the defendant's brother-in-law. He is
16 clearly a very influential person in Cambodia. The defendant
17 obviously married into a family that has some political
18 influence over in Cambodia.

19 What did that get him? Well, Sander DeMontero told
20 you he helped get the mothers released from prison, Ly Kim Eng
21 and Kumlang. Ly Kim Eng is L.K.xxx's mother. Kumlang is the
22 mother of S.R.xxx and S.S.xxx. He could barely -- Sander
23 DeMontero could barely pick those women out from the photographs
24 that he was shown. In fact, he said he thought maybe Ly Kim Eng
25 had served him iced tea at Pepe's house but he wasn't really

1 sure. He could barely pick them out from a photograph. "I
2 didn't pay attention to that" when asked about children or
3 anyone else at the defendant's house. That was DeMontero's
4 answer. "I didn't pay attention to that."

5 Then the defendant is arrested, the mothers go to
6 prison. DeMontero goes down to the prison looking for the
7 mothers because he was so concerned about them. He testified he
8 wanted to help them. They had no food. He had great concern
9 for their welfare. He met with Ly Kim Eng's mother-in-law
10 because she wanted to have someone watch David, L.K.xxx's little
11 brother.

12 Sander DeMontero's profound interest in helping the
13 mothers. He was helping them so that they would help the
14 defendant. He helped get them out of prison in Cambodia. And
15 what did they do? They turned around and came to a deposition
16 and said, "I had no idea that anything was wrong with my
17 daughter." They -- Sander DeMontero helped them, they helped
18 the defendant. You can hear the defendant on the phone from the
19 MDC telling Sander DeMontero, "That's great. It's good that you
20 got the mothers out but that's not good enough. We have to go
21 further. We have to figure out a way to prevent the victims
22 from being brought to the United States. Stop them at the
23 airport if you have to. Reunite them with their families."

24 Why does he want them reunited with their families?
25 Because then they won't come to the United States. Then they

1 won't be able to testify against him. Without the girls, there
2 is no case. That's what he told DeMontero. And he tasked
3 DeMontero with trying to help him make that happen.

4 DeMontero is very good at helping the defendant. You
5 saw DeMontero introduce the defendant to some of the most
6 well-connected people in the country. He is complaining about
7 not being able to put on a defense. He had the former Prime
8 Minister of the country walk into this courtroom and tell you
9 that what a great school distribution program he had going on in
10 Cambodia. He had Khieu San, who -- obviously, both Khieu San
11 and his wife are obviously very high-ranking officials in the
12 Cambodia government who has a profound interest all of a sudden
13 in the welfare of L.K.xxx's mother and in the welfare of
14 S.S.xxx's and S.R.xxx's mother. And we would submit to you his
15 profound interest in their welfare is helping them so that they
16 will help the defendant.

17 You hear him on the telephone. "We need to get a
18 statement. Get the thumbprint on the statement. Get a
19 thumbprint on a statement that we can introduce in court. In
20 the United States."

21 And then here comes the deposition and Kumlang, who
22 says she's illiterate, she can't read, she can't write, some --
23 DeMontero gets a thumbprint from her on a document that says
24 that the defendant didn't harm her children. And when she is
25 asked the document, she said, "That's not what I thought it

1 said. I thought this was about getting my children back." She
2 really had no idea what she was persuaded to put her thumbprint
3 on. She has just been told over and over you need to get your
4 children back. You need to get your children back. She is the
5 one who sent her children away in the first place. So that's a
6 separate issue.

7 But it is more than ironic that the Defense is
8 claiming that the fact the case is in Cambodia has somehow
9 created a problem for them. Not only did they bring in the
10 high-ranking officials, but they brought in Mr. Mao, the tutor
11 from the school. And, by the way, something about Mr. Mao's
12 testimony. He said he was at the house tutoring the kids
13 between June of '05 and December of '05. Since the victims were
14 there between December of '05 and June of '06, it would seem
15 fairly likely that Mr. Mao got his dates mixed up. Is he lying?
16 No. He did go to the house and he did tutor the kids. But like
17 a number of the children in this case, maybe he doesn't have his
18 dates exactly perfect. His dates were a little bit off.
19 Something to keep in mind when evaluating the testimony of a
20 number of people.

21 What else does the defendant's Cambodian defense tell
22 us? The school supply distribution program really gave him an
23 aura of legitimacy and access to people in power that he thought
24 essentially would take care of him. He thought that these
25 people who were in power could help him and would take care

1 pretty much any problem that he had.

2 And they certainly have tried. The Defense is right,
3 a lot of very high-powered people willing to fly 9,000 miles to
4 testify on his behalf. He married well into a well-connected
5 family, and those people have certainly done their best. That
6 is the context within which to examine the Defense and his
7 notion that somehow he is so prejudiced because the country that
8 he chose to commit his crimes in is located halfway around the
9 world.

10 Now, he we heard a number of attacks on the Government
11 investigation. One of them involved Basang. Unlike the mothers
12 who the defendant's brother-in-law helped secure the release
13 from prison, she is not released from custody. As you heard,
14 she is serving a 27-year sentence in a Cambodian prison for
15 which she did in this case. And, of course, as the judge has
16 instructed you, you have to keep that in mind when you evaluate
17 her testimony. She is in prison. She was taken from the prison
18 for the period of time that -- her deposition was taken. And
19 she does have an agreement with the Government and you will have
20 it in evidence. It is Exhibit No. 2006. And what it says --
21 what it says is in the second paragraph you can see that she has
22 immunity for any information that she provides to ICE,
23 Immigration and Customs Enforcement, concerning the sexual
24 activities of Michael Joseph Pepe with minors in Cambodia. So
25 the information won't be used against her in any prosecution in

1 the United States except a prosecution for perjury. So the U.S.
2 government has agreed not to prosecute her.

3 Well, the Cambodian government already has prosecuted
4 her. She is already doing a 27-year sentence. And keep in mind
5 what this law prohibits. It prohibits a U.S. citizen, someone
6 who has all of the privileges that we have as U.S. citizens,
7 from going to a foreign country and engaging in illicit sexual
8 conduct. A U.S. citizen like the defendant.

9 She's not a U.S. citizen, she testified in her
10 deposition. So unclear whether she even could be prosecuted
11 even if we were to bring her halfway around -- take her out of
12 prison and bring her halfway around the world to prosecute her.

13 But in any event, she is already serving a sentence
14 over there. And it says the agreement is conditioned upon her
15 full cooperation, including giving completely candid and
16 truthful information and testimony. Which means you must tell
17 ICE investigators the truth, the whole truth and nothing but the
18 truth. And if you don't, this agreement is null and void.

19 This is the agreement that she has with the U.S.
20 government. You have it in evidence. There is no such
21 agreement requiring any sort of candid or truthful testimony
22 regarding Ly Kim Eng or Kumlang, the two mothers who provided
23 their daughters to the defendant and then subsequently turned
24 around and testified for the defendant.

25 Now, the Defense goes out of its way to attack the

1 Government investigation. And I will just walk through those
2 with you. These are all things which came out during the trial.
3 I would submit to you nothing about this investigation has been
4 hidden from you. It has been shown to you, warts and all, from
5 the beginning.

6 And as you can see, the evidence that you saw here in
7 court, the evidence that you will have back in the jury room, is
8 the evidence that you saw Gary -- in the photographs that Gary
9 Phillips took on June 17th of 2006. He went in that house, he
10 was one of the first people in the door, and he took pictures of
11 the evidence. June 17th, 2006, not four days later. Right when
12 the Cambodian National Police went through the door. That same
13 evidence we brought in here and showed to you.

14 So was the door -- was one door to the kitchen and the
15 house open on June 18th? Yeah. It's open in the photo. What
16 does that mean? Nothing. If you see the evidence in the house
17 on June 17th and we're bringing the same piece of evidence in
18 here that's been in the custody of Immigration and Customs
19 Enforcement for three years, what that means is the evidence was
20 in the house on June 17th, 2006 and now it's in U.S. custody.

21 The Defense made a big deal out of the bag. The
22 bag -- the yellow bag, his rape kit. Special Agent Phillips
23 testified about this. He came through the door -- this is
24 Government's Exhibit 1100. He came through the door of the
25 defendant's bedroom shortly after the Cambodian National Police.

1 Remember what special Agent Phillips said about the door to that
2 bedroom in the defendant's house. It locks. When the Cambodian
3 National Police went in to execute the search warrant, the
4 defendant's bedroom door was locked and they had to force it
5 open. Special Agent Phillips was in behind them. They opened
6 up the closet and there was the bag, the yellow bag on the
7 shelf. Not moved by anybody. You saw on the video they took
8 the bag off the shelf and they opened it.

9 Government's Exhibit 1104 is that bag Special
10 Agent Phillips testified about 20 seconds after they put it down
11 on the bed. That's the bag as the defendant had it in his
12 closet in his bedroom. With the rope.

13 Now, are there photographs, later photographs, where
14 the Cambodian National Police had other items in that bag? Yes,
15 there are. Special Agent Phillips testified about that. There
16 was no effort to exaggerate anything, no effort to hide
17 anything. This is the bag as it came out of the closet.

18 Did the Cambodian National Police engage in CSI-like
19 evidence collection techniques? No, they didn't. But we have a
20 photograph of what it looked like when it was in the closet and
21 right after it came out of the closet. Nobody is trying to
22 plant anything. Or hide anything. The video shows the
23 Cambodian National Police dumped the bag out on the bed so they
24 can see what's inside of it, and then they have other items that
25 they're throwing down on the bed. The KY jelly, the condoms,

1 those are other items which were in the defendant's bedroom.

2 Whether they were inside the bag or not is not the point. The
3 point is they were in his bedroom, the same bedroom where the
4 victims all uniformly say they were sexually assaulted.

5 The idea -- this showing the video and the photographs
6 and complaining that the Cambodian National Police dumped the
7 evidence out on the bed is an effort, I guess, to distract. I
8 don't know. To make you focus on something which is not an
9 issue.

10 What else is not an issue? The forensic evidence, the
11 thumb drive. Again, this is something that Mr. Pixley testified
12 about on direct examination. Okay. He went through this in
13 probably painstaking detail. I will not go through it, but
14 please remember this exhibit shows the three things that were
15 added to this thumb drive in Cambodia. And the blue checks are
16 the files that were accessed. Yes, somebody in Cambodia looked
17 at the thumb drive, they didn't follow ICE, Immigration and
18 Customs Enforcement, perfect forensic collection techniques.

19 Nobody from the Government ever walked in and told you
20 that the evidence collection techniques on this thumb drive were
21 perfect. Nobody walked in and said by the way, we
22 write-protected this drive right from the beginning and we
23 cannot imagine what happened. No one said that. We, from the
24 beginning, explained what happened. And this was such a
25 sophisticated effort to write to the thumb drive that what they

1 left -- what was left in Cambodia on his thumb drive is a
2 picture of the defendant in custody. If you're going to
3 fabricate evidence or make something up, probably not the -- the
4 thing you're not going to make up and put on the computer media
5 is a picture of the defendant in custody. Something which was
6 clearly taken after the seizure. So what is this? It's a
7 mistake. It's sloppy.

8 What does it mean in the context of this case and this
9 investigation, which is really the question. Absolutely
10 nothing. Because the pictures of L.K.xxx that you looked at
11 earlier, the pictures of Ni that you looked at earlier, the
12 photographs of him, of the defendant naked, weren't on this
13 thumb drive. They were on the hard drive and the disks.

14 And remember what Mr. Pixley said about the hard drive
15 and the disks. They were not improperly accessed. They were
16 first looked at properly by computer -- by Immigration and
17 Customs Enforcement computer forensic examiners. So the piece
18 of media that was improperly accessed, which you were told from
19 the get-go was improperly accessed, had nothing of value on it.

20 Like the issue with the bag, it is a red herring. It
21 doesn't mean anything.

22 Dr. Maloney, the interviews. Okay. Dr. Maloney could
23 not even qualify as an expert in child psychology. He qualified
24 only as an expert in general psychology because as he said, he
25 hasn't done this in about ten years. And essentially

1 Dr. Maloney said the same thing that Jim Clemente said at the
2 beginning of the case about interviews of kids. Open questions
3 are better than leading questions. If the question is an open
4 question, does that necessarily mean the child is telling the
5 truth? No. If the questions is a leading question, does that
6 necessarily mean the child is lying? No. What happens when you
7 have a leading question. Both of them said well, you look for
8 corroboration. Okay. You know there is corroboration in this
9 case.

10 But what else? You look to see if the child just
11 buckled, just agreed with the suggestive questioning or whether
12 the child stood up and said no, actually, no, neither choice
13 that you have presented to me is accurate, it's this third
14 choice. And you heard Dr. Maloney on cross-examination, he
15 agreed with example after example after example of situations
16 where every single victim spontaneously provided information or
17 rejected a choice given by the agents that turned out to be --
18 where neither answer was correct. And Dr. Maloney agreed,
19 agreed, agreed and then remember he said, well, maybe this was
20 contaminated by another interview. So then he was asked, oh, do
21 you have any evidence to suggest that. No.

22 So he has no evidence to suggest it's contaminated and
23 he has a child who is volunteering information or a child like
24 I.T. who says in response to the assembled group, no, this is
25 not the man. She stands up and says huh-uh, I don't think so.

1 And there was example after example. That most
2 obvious non-sexual example is the girls giving a description of
3 the bed to agents who had never seen the bed. And the agent
4 saying oh, the carving is wood, they're -- oh, it's wood
5 flowers, volunteering information. Agents -- Agent Phillips,
6 the case agent, didn't even conduct all of the interviews of the
7 girls in this case. If you notice on cross-examination, for
8 example, both K.S.x and T.C.xx were asked questions about what
9 Special Agent Phillips said to them during the interviews. He
10 wasn't even the agent who interviewed them. The Defense
11 attorneys can't even keep it straight. He wasn't even the
12 interviewer.

13 One of the interviews was conducted -- the first
14 interview of NTDx was conducted in Vietnamese. It didn't even
15 go through an interpreter.

16 The bottom line with the interviews is that
17 Dr. Maloney and Jim Clemente agreed it's hard to interview kids.
18 You look to see where there is corroboration. That's really --
19 the Defense made, by the way, very much during closing, of the
20 Government not calling an expert on Cambodian culture. I told
21 you in opening statement I would call an expert on Cambodian
22 culture because the defendant did commit these crimes in
23 Cambodia.

24 During voir dire it seemed a lot of people were not
25 familiar with that culture and we thought that it would be

1 helpful. As it turned out, in large measure through the Defense
2 case, you have had Cambodian culture I think presented to you in
3 spades and you really don't need anybody to come in here and
4 tell you any more than you have already heard about Cambodian
5 culture. And quite frankly, the victims themselves I think very
6 adequately conveyed to you their own demeanor, their own mindset
7 and where they're coming from insofar as their ability to
8 resist.

9 Oh, Mr. Brown made much out of the age of the other
10 girl who is photographed with L.K.xxx. I'm not quite sure why.
11 I guess to argue -- I don't know -- that L.K.xxx is older than
12 12 or 13. Keep in mind that the age cutoff for commercial sex
13 is 18, and neither L.K.xxx or any other victim in this case is
14 anywhere near 18 years old now, much less two years ago.

15 Dr. Berkowitz looked at that photograph and said she
16 thought Ngoc was about 14 years old. Dr. Berkowitz does not use
17 the Tanner scale that Mr. Brown so resoundingly criticized. Her
18 aging is based on her vast experience. And she said it is true
19 that there is some variance based on race. She has looked and
20 sort of across the board, if you remember what she said, the
21 studies that show variances based on race show age difference of
22 at most a half a year. Maybe different races look, you know,
23 half a year off. You can add half a year to the age of any of
24 these girls and get nowhere near the age cutoff where defendant
25 could have been legally engaging in any sort of sexual activity

1 with them.

2 Ladies and gentlemen, I think the testimony of the
3 victims, well corroborated by this investigation, has more than
4 adequately shown well beyond a reasonable doubt that he engaged
5 in illicit sexual conduct with all seven of these girls and we
6 would ask you to return verdicts of guilty on all seven counts
7 of the Indictment and again thank you very much for your
8 attention to this case.

9 Thank you, Your Honor.

10 THE COURT: Thank you.

11 When you begin your deliberations, you should elect
12 one member of the jury as your foreperson. That person will
13 preside over the deliberations and speak for you here in court.
14 You will then discuss the case with your fellow jurors to reach
15 agreement, if you can do so.

16 Your verdicts as to each individual count, whether
17 guilty or not guilty, must be unanimous. Each of you must
18 decide the case for yourself but you should do so only after you
19 have considered all the evidence, discussed it fully with the
20 other jurors and listened to the views of your fellow jurors.
21 Do not be afraid to change your opinion if the discussion
22 persuades you that you should, but do not come to a decision
23 simply because other jurors think it is right.

24 It is important that you attempt to reach unanimous
25 verdicts but, of course, only if each of you can do so after

1 having made your own conscientious decision. Do not change an
2 honest belief about the weight and effect of the evidence simply
3 to reach a verdict.

4 Your verdicts must be based solely on the evidence and
5 on the law as I have given it to you in these instructions;
6 however, nothing that I have said or done is intended to suggest
7 what your verdict should be. That is entirely for you to
8 decide.

9 Some of you have taken notes during the trial.
10 Whether or not you took notes, you should rely on your own
11 memory of what was said. Notes are only to assist your memory.
12 You should not be overly influenced by the notes.

13 The punishment provided by law for this crime is for
14 the Court to decide. You may not consider punishment in
15 deciding whether the Government has proved its case against the
16 defendant beyond a reasonable doubt.

17 A verdict form has been prepared for you. After you
18 have reached unanimous agreement on verdicts, your foreperson
19 will fill in the form that has been given to you, sign and date
20 it and advise the bailiff that you're ready to return to the
21 courtroom.

22 If it becomes necessary during your deliberations to
23 communicate with me, you may send a note through the bailiff,
24 signed by your foreperson or by one or more members of the jury.
25 No member of the jury should ever attempt to communicate with me

1 except by a signed writing, and I will respond to the jury
2 concerning the case only in writing or here in open court. If
3 you send out a question, I will consult with the lawyers before
4 answering it, which may take some time. You may continue your
5 deliberations while waiting for the answer to any question.

6 Remember that you are not to tell anyone, including
7 me, how the jury stands numerically or otherwise on the question
8 of the guilt of the defendant until after you have reached a
9 unanimous verdict or have been discharged.

10 As I indicated, the first thing I will want you to do
11 is jot us a note telling us what you want your schedule to be.
12 Remember that if you're not finished by the end of this week,
13 that you can deliberate on Monday because you won't need me very
14 much. And so you should keep that in mind. And again, you can
15 keep this 8:00 to 2:00 schedule or you can take a lunch break,
16 whichever you prefer, just let us know what that schedule will
17 be and make sure you give us a good six hours of your time as
18 you have been now.

19 I am going to have the clerk swear in the bailiff and
20 then we will ask the alternate to step out in the hall until
21 after we have Mr. Pierson come out and talk to you and tell you
22 what to do.

23 Mr. Pierson, will you please swear the bailiff.

24 THE CLERK: Will you please state and spell your name
25 for the record.

1 THE BAILIFF: Stoney Jackson S-T-O-N-E-Y,
2 J-A-C-K-S-O-N.

3 Stoney Jackson, Bailiff was sworn

4 THE COURT: All right. Thank you, Mr. Jackson. You
5 can take the jurors.

6 (Jury Out)

7 THE COURT: You may be seated. Make sure before you
8 leave that you give Mr. Pierson your office numbers and cell
9 phone numbers so that there is no delay in reaching you. And I
10 assume the furthest away anyone will be will be the public
11 defender's office. We will let you know if we have any
12 questions or need you for any other reason.

13 I am going to require you to stay here today until the
14 jury leaves, just in case they send out a note for some reason.
15 Usually a note comes out immediately asking for Post-It's or
16 markers or something. Mr. Pierson will talk to the alternate,
17 make sure he stays on call and we have a way to reach him.

18 Is there anything else anyone thinks we should talk
19 about?

20 MR. GUNN: Is the jury going to have the option of
21 staying past 2:00 today or they'll just stay until 2:00 today?

22 THE COURT: They can do whatever they want. The first
23 thing we are waiting for is a note from them telling us what
24 they want to do.

25 MR. GUNN: If they want us to stay until 5:00, do you

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE DALE S. FISCHER, JUDGE PRESIDING

United States of America,)
Plaintiff,)
vs.) Case No.
) CR 07-168 (A) -DSF
Michael Joseph Pepe,)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS

Day 13

Los Angeles, California

Thursday, May 29, 2008

Pamela A. Seijas, CSR, FCRR
Official Reporter
Roybal Federal Building
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Room 181-I
Los Angeles, California 90012
(213) 687-0446

1 APPEARANCES:

2
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5 ASSISTANT UNITED STATES ATTORNEY
6 JOHN LULEJIAN
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9 LOS ANGELES, CA 90012
10
11
12

13 FOR DEFENDANT: OFFICE OF THE FEDERAL PUBLIC DEFENDER
14 BY: CARL GUNN
15 DEPUTY FEDERAL PUBLIC DEFENDER
16 CHARLES BROWN
17 DEPUTY FEDERAL PUBLIC DEFENDER
18 321 EAST SECOND STREET
19 LOS ANGELES, CA 90012
20
21

22 ALSO PRESENT: ATTACHE GARY PHILLIPS
23 ICE SPECIAL AGENT EDDY WANG
24
25

(Off the record from 9:05 a.m. to 10:58 a.m.)

(Jury Out)

THE COURT: Good morning.

MR. BROWN: Good morning, Your Honor.

MS. DONAHUE: Good morning, Your Honor.

THE COURT: Maybe we should have appearances of
counsel.

MS. DONAHUE: Patricia Donahue and John Lulejian on
behalf of the United States.

MR. BROWN: And Charles Brown and Carl Gunn on behalf
of Mr. Pepe, who is present.

THE COURT: Good morning. Good morning, Mr. Pepe.

THE DEFENDANT: Good morning, Your Honor.

THE COURT: Ms. Donahue, I don't see any of the
victims.

MS. DONAHUE: The victims are not close enough to the
courthouse.

THE COURT: All right.

MS. DONAHUE: So they are not going to be here,
Your Honor.

THE COURT: All right. I have received a note from
the jury with a time written on it of 10:30 a.m. indicating that
the jury has reached a unanimous verdict.

Mr. Brown, depending on -- or Mr. Gunn, depending on
what the verdict is, do you believe you will want to have the

1 jury polled?

2 MR. BROWN: Yes, Your Honor.

3 THE COURT: It would be my plan, then, to ask the
4 jurors individually as to whether those verdicts and findings
5 collectively were their verdict.

6 MR. BROWN: Very well.

7 THE COURT: All right. Mr. Pierson.

8 (Jury In)

9 THE COURT: Who is our foreperson?

10 Juror No. 11. Thank you.

11 I understand that the jury has reached a unanimous
12 verdict as to all counts and findings; is that correct?

13 THE JUROR: Yes, it is.

14 THE COURT: Would you hand that form to the bailiff,
15 please.

16 The verdict form reads as follows:

17 "In the matter of the United States of America vs.
18 Michael Joseph Pepe, CR 07-168(A)-DSF, as to Count 1" -- that's
19 I.T. or I.T. -- "We, the jury in the above-entitled action, find
20 the defendant, Michael Joseph Pepe, guilty as charged in Count
21 One of the First Superseding Indictment.

22 "If you find defendant, Michael Joseph Pepe, guilty of
23 the charge set forth in this count, please identify each of the
24 following definitions of illicit sexual conduct that you
25 unanimously find applies to his conduct with I.T.."

1 The following items are checked and the following
2 items only:

3 "Any commercial sex act with a person under 18 years
4 of age;

5 "Knowingly rendering another person who is under 18
6 years of age to be unconscious and thereby engaging in a sexual
7 act with that other person;

8 "Knowingly administering to another person who is
9 under 18 years of age by force or threat of force or without the
10 knowledge or permission of that person, a drug, intoxicant or
11 other similar substance and thereby substantially impairing the
12 ability of that other person to appraise or control conduct and
13 engaging in a sexual act with that person;

14 "And knowingly engaging in a sexual act with a person
15 under 12 years of age."

16 The remaining finding is not checked.

17 As to Count 2, L.K.xxx or L.K.:

18 "We, the jury in the above-entitled action, find the
19 defendant, Michael Joseph Pepe, guilty as charged in Count 2 of
20 the First Superseding Indictment.

21 "If you find defendant, Michael Joseph Pepe, is guilty
22 of the charge set forth in this count, please identify each of
23 the following definitions of illicit sexual conduct that you
24 unanimously find applies to his conduct with L.K.xxx."

25 All of the items are checked.

1 That is:

2 "Any commercial sex act with a person under 18 years
3 of age;

4 "Knowingly rendering another person who is under 18
5 years of age to be unconscious and thereby engaging in a sexual
6 act with that other person;

7 "Knowingly administering to another person who is
8 under 18 years of age by force or threat of force or without the
9 knowledge or permission of that person a drug, intoxicant or
10 other similar substance and thereby substantially impairing the
11 ability of that other person to appraise or control conduct, and
12 engaging in a sexual act with that person;

13 "And knowingly engaging in a sexual act with a person
14 who is less than 16 years old but at least 12 years old and who
15 is at least four years younger than defendant."

16 As to Count 3, S.R.xxx or S.R.:

17 "We, the jury in the above-entitled action, find the
18 defendant, Michael Joseph Pepe, guilty as charged in Count 3 of
19 the First Superseding Indictment.

20 "If you find defendant, Michael Joseph Pepe, is guilty
21 of the charge set forth in this count, please identify each of
22 the following definitions of illicit sexual conduct that you
23 unanimously find applies to his conduct with S.R.xxx."

24 The jury has checked, "Any commercial sex act with a
25 person under 18 years of age and knowingly engaging in a sexual

1 act with a person under 18 years of age."

2 The remaining item is not checked.

3 Count 4 as to S.S.xxx or S.S.:

4 "We, the jury in the above-entitled action, find the
5 defendant, Michael Joseph Pepe, guilty as charged in Count 4 of
6 the First Superseding Indictment.

7 "If you find defendant, Michael Joseph Pepe, is guilty
8 of the charge set forth in this count, please identify each of
9 the following definitions of illicit sexual conduct that you
10 unanimously find applies to his conduct with S.S.xxx."

11 There is a check next to "Any commercial sex act with
12 a person under 18 years of age and knowingly engaging in a
13 sexual act with a person under 12 years of age."

14 The remaining item is not checked.

15 As to Count 5, K.S.x or K.S.:

16 "We, the jury in the above-entitled action, find the
17 defendant, Michael Joseph Pepe, guilty as charged in Count 5 of
18 the First Superseding Indictment.

19 "If you find defendant, Michael Joseph Pepe, is guilty
20 of the charge set forth in this count, please identify each of
21 the following definitions of illicit sexual conduct that you
22 unanimously find applies to his conduct with K.S.x."

23 There is a check next to "Any commercial sex act with
24 a person under 18 years of age."

25 And a check next to "Knowingly engaging in a sexual

1 act with a person who is less than 16 years old but at least 12
2 years old and who is at least four years younger than
3 defendant."

4 The remaining box is not checked.

5 As to Count 6, NTDx or N.T.D.:

6 "We, the jury in the above-entitled action, find the
7 defendant, Michael Joseph Pepe, guilty as charged in Count 6 of
8 the First Superseding Indictment.

9 "If you find defendant, Michael Joseph Pepe, is guilty
10 of the charge set forth in this count, please identify each of
11 the following definitions of illicit sexual conduct that you
12 unanimously find applies to his conduct with NTDx."

13 There is a check next to "Any commercial sex act with
14 a person under 18 years of age."

15 And "Knowingly engaging in a sexual act with a person
16 who is less than 16 years old but at least 12 years old and who
17 is at least four years younger than defendant."

18 The remaining boxes are not checked.

19 Count 7, T.C.xx or T.C.: "We, the jury in the
20 above-entitled action, find the defendant, Michael Joseph Pepe,
21 guilty as charged in Count 7 of the First Superseding
22 Indictment.

23 "If you find defendant, Michael Joseph Pepe, is guilty
24 of the charge set forth in this count, please identify each of
25 the following definitions of illicit sexual conduct that you

1 unanimously find applies to his conduct with T.C.xx."

2 There is a check in the boxes for "Any commercial sex
3 act with a person under 18 years of age."

4 There is a check next to the box "Knowingly
5 administering to another person who is under 18 years of age by
6 force or threat of force or without the knowledge or permission
7 of that person, a drug, intoxicant or other similar substance
8 and thereby substantially impairing the ability of that other
9 person to appraise or control conduct and engaging in a sexual
10 act with that person."

11 And a check next to "Knowingly engaging in a sexual
12 act with a person who is less than 16 years old but at least 12
13 years old and who is at least four years younger than
14 defendant."

15 The remaining box is not checked.

16 And it's signed by our jury foreperson and dated this
17 29th day of May, 2008, at Los Angeles, California.

18 Ladies and gentlemen, are these your verdicts and
19 findings, so say you one, so say you all?

20 (Jurors answer affirmatively)

21 THE COURT: Would counsel like the jury polled?

22 MR. BROWN: Yes, Your Honor.

23 THE COURT: Ladies and gentlemen, I am going to ask
24 each of you whether these are your verdicts or your findings.
25 Please answer "Yes" or "No."

Juror No. 1?

JUROR NO. 1: Yes.

THE COURT: Juror No. 2?

JUROR NO. 2: Yes.

THE COURT: Juror No. 3?

JUROR NO. 3: Yes.

THE COURT: Juror No. 4?

JUROR NO. 4: Yes.

THE COURT: Juror No. 5?

JUROR NO. 5: Yes.

THE COURT: Juror No. 6?

JUROR NO. 6: Yes.

THE COURT: Juror No. 7?

JUROR NO. 7: Yes.

THE COURT: Juror No. 8?

JUROR NO. 8: Yes.

THE COURT: Juror No. 9?

JUROR NO. 9: Yes.

THE COURT: Juror No. 10?

JUROR NO. 10: Yes.

THE COURT: Juror No. 11?

JUROR NO. 11: Yes.

THE COURT: Juror No. 12?

JUROR NO. 12: Yes.

THE COURT: Counsel, is there any reason that the

1 clerk should not record the verdicts as read?

2 MS. DONAHUE: No, Your Honor.

3 MR. BROWN: No, Your Honor.

4 THE COURT: All right. The clerk will do so.

5 Members of the jury, you have now completed your
6 service as jurors on this case. On behalf of the United States
7 District Court and all of us here, I want to thank you for
8 giving your time and effort to the administration of justice in
9 our community.

10 Believe me, we realize what an imposition it is to ask
11 you to serve. Fortunately, we kept our trial within the time
12 frame, and we really appreciate the time that you have spent
13 doing this.

14 I hope that you all realize, especially those of you
15 who haven't served before, how critical it is for members of the
16 community like you to perform this service. And we want you to
17 know how much we truly appreciate it.

18 You are no longer under orders not to speak to anyone
19 about the case. You now have the absolute right to discuss or
20 not to discuss your verdict and findings with anyone you choose.
21 If you do choose to do, please remember that the proceedings
22 have been very important to the parties, as I know they have
23 been to you, and please also respect your fellow jurors and
24 their privacy and the views they shared in the jury room. And
25 so I suggest that you not say anything to anyone that you

1 wouldn't be willing to say here in open court and under oath.

2 Attorneys often appreciate any comments that you might
3 have to assist them in the future. That is purely voluntary.
4 You don't have to speak to them if you don't want to. If you
5 are willing to speak to them, you may want to wait outside in
6 the hall, and they can join you shortly.

7 If you're interested -- you are not compelled, but if
8 you're interested, you can join me in my chambers briefly and
9 see what a federal judge's chambers look like. If you want to
10 do that, Stoney will show you how to get back to my chambers,
11 and if not, then you are excused.

12 Counsel, I will be right with you.

13 (Jury Out)

14 THE COURT: All right. Mr. Gunn?

15 MR. GUNN: I'm sorry, Your Honor.

16 THE COURT: That's all right.

17 MR. GUNN: Just turning it off.

18 MR. BROWN: Your Honor, I think we just wanted to
19 perhaps ask the Court to extend the deadline for filing of the
20 trial motion.

21 THE COURT: All right. The outstanding Rule 29
22 motions are denied.

23 How much time do you want for the --

24 MR. GUNN: I would like a couple months, Your Honor.
25 I just want to look at it carefully. There's a good chance we

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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION
11

12
13 UNITED STATES OF AMERICA,
14 Plaintiff,
15 v.
16 MICHAEL PEPE,
17 Defendant.
18
19

Case No. CR-07-00168-DSF

**Stipulation to Correct / Modify Record
on Appeal re Jury Instructions and
Verdict Form Pursuant to Fed. R.
App. Proc. 10(e)**

Stipulation to Correct / Modify Record on Appeal

IT IS HEREBY STIPULATED BY AND BETWEEN plaintiff, United States of America, by Assistant United States Attorney Patricia Donahue, and defendant, Michael Pepe, by Deputy Federal Public Defender Charles C. Brown, as follows:

1. This case is currently pending in the Ninth Circuit, Case No. 14-50095. The parties submit this stipulation pursuant to Federal Rule of Appellate Procedure 10(e)(2), which states: "If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded: (A) on stipulation of the parties; (B) by the district court before or after the record has been forwarded; or (C) by the court of appeals."
2. At trial, the following documents pertaining to the jury instructions were not filed and are therefore not reflected on the Court's docket:
 - a. On May 20, 2008, at the direction of the Court, government counsel emailed the Court's clerk and defense counsel the following three documents:
 - i. The Joint Jury Instructions that had been electronically filed on May 19, 2008. *See* Docket No. 255.
 - ii. The Disputed Jury Instructions, a copy of which is attached hereto as Exhibit A.
 - iii. The Government Proposed Jury Instructions, a copy of which is attached hereto as Exhibit B.
 - b. On May 21, 2008, in the courtroom, the Court provided government counsel and defense counsel a set of proposed jury instructions compiled by the Court. *See* RT (05/21/2008) 8. A copy of this document is attached hereto as Exhibit C.
 - c. On May 23, 2008, in the courtroom, the Court provided government counsel and defense counsel a set of proposed jury instructions compiled by the Court.

1 *See* RT (05/23/2008) 3-4. A copy of this document is attached hereto as
2 Exhibit D.

3 d. On May 27, 2008, in the courtroom, the Court provided government counsel
4 and defense counsel a set of proposed jury instructions compiled by the Court.
5 *See* RT (05/27/2008) 5. A copy of this document is attached hereto as Exhibit
6 E. Although the words “and more than” are stricken on page 26 of Exhibit E,
7 they were not stricken on the original version of this document provided by
8 the Court.

9 3. At trial, the following documents pertaining to the verdict form were not filed
10 and are therefore not reflected on the Court’s docket:

11 a. On May 21, 2008, at the direction of the Court, government counsel emailed
12 the Court’s clerk and defense counsel a proposed verdict form. The victims’
13 names were not redacted in the proposed verdict form emailed to the Court
14 and to defense counsel. Attached hereto as Exhibit F is a copy of the
15 document emailed to the Court, with the victims’ names redacted. The Court
16 received this email, and stated that this form did not have a signature page.
17 *See* RT (05/21/2008) 8.

18 b. On May 24, 2008, at the direction of the Court, government counsel emailed
19 the Court’s clerk and defense counsel a proposed verdict form that included a
20 signature block. The victims’ names were not redacted in the proposed
21 verdict form emailed to the Court and to defense counsel. Attached hereto as
22 Exhibit G is a copy of the document emailed to the Court, with the victims’
23 names redacted. Before receiving this email, the court had already modified
24 the proposed verdict form, as stated on the record. *See* RT (05/27/2008) 5-6.
25 This was the verdict form provided to the jury.

26 4. Because the portions of the trial transcripts pertaining to the discussion of, and
27 the Court’s rulings on, the jury instructions and verdict form refer to the above-
28 described documents that were never filed and made part of the Court’s docket,

1 the Ninth Circuit will not be able to follow what happened in this Court without
2 having copies of those documents. The parties therefore agree and stipulate that
3 the record should be corrected and modified to reflect that the attached
4 documents were before the Court.

- 5 5. A proposed order consistent with this stipulation is being filed simultaneously
6 with this stipulation.

7
8 February 27, 2015

Respectfully submitted,

9 HILARY L. POTASHNER
Acting Federal Public Defender

10
11 /s/ Charles C. Brown
12 CHARLES C. BROWN
Deputy Federal Public Defender

13 Attorneys for Defendant

14
15 STEPHANIE YONEKURA
Acting United States Attorney

16
17 /s/ Patricia Donahue
18 PATRICIA DONAHUE
Assistant United States Attorney

19 Attorneys for Plaintiff

20 (Per Email Authorization)

Exhibit A

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3 Chief, Criminal Division
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8 Attorneys for Plaintiff
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 UNITED STATES OF AMERICA,) CR No. CR 07-168(A)-DSF
13 Plaintiff,) DISPUTED JURY INSTRUCTIONS
14 v.)
15 MICHAEL JOSEPH PEPE,)
16 Defendant.)
17)

18 Plaintiff United States of America and defendant Michael
19 Joseph Pepe hereby submit the following Disputed Jury
20 Instructions, with the parties' respective positions.

21 Dated: May 19, 2008

Respectfully submitted,

22 THOMAS P. O'BRIEN
23 United States Attorney

24 CHRISTINE C. EWELL
25 Assistant United States Attorney
Chief, Criminal Division

26 PATRICIA A. DONAHUE
27 Assistant United States Attorney

28 DATED: May __, 2008

CARLTON F. GUNN
Deputy Federal Public Defender

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 4

3

4 The defendant is charged in seven counts with traveling in
5 foreign commerce and engaging in illicit sexual conduct with
6 seven minor girls. In order for defendant to be found guilty of
7 these charges, the government must prove each of the following
8 elements beyond a reasonable doubt:

9 First, the defendant is a United States citizen;

10 Second, the defendant traveled in foreign commerce; and

11 Third, while in Cambodia, the defendant engaged in illicit
12 sexual conduct during the time and with the person alleged in the
13 particular count.

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26 18 U.S.C. § 2423 (c)

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1 Objection to Government's Proposed Instruction No. 4:

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3 The defense objects to Government's Proposed Instruction No. 4 and
4 requests that the Court instead give Defendant's Proposed Instruction No. 2 for
5 reasons outlined in more detail in the defense's motions to dismiss the indictment
6 which have been previously denied by the Court. 18 U.S.C. § 2423(c) must be
7 read to require some temporal connection between the travel and the illicit sexual
8 conduct, especially when the doctrine of constitutional avoidance is considered.
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COURT'S INSTRUCTION NO. _____

DEFENDANT'S PROPOSED INSTRUCTION NO. 2

The defendant is charged in seven counts with traveling in foreign commerce and engaging in illicit sexual conduct with seven minor girls. In order for defendant to be found guilty of these charges, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant is a United States citizen;

Second, the defendant traveled in foreign commerce; and

Third, while in Cambodia, the defendant engaged in illicit sexual conduct during the time and with the person alleged in the particular count.

Fourth, the defendant engaged in the illicit sexual conduct immediately or soon after the travel in foreign commerce.

18 U.S.C. § 2423(c); Webster's Encyclopedia Unabridged Dictionary of the English Language 77, 1967 (1996 ed.), cited in Motion to Dismiss Indictment, at 13.

Government's Response to Defendant's Objection to Government's
Proposed Instruction No. 4, and Government's Objection to
Defendant's Proposed Instruction No. 2

The government's proposed instruction tracks the language of the statute, 18 U.S.C. § 2423(c). Defendant seeks to add an element not contained in the statute, namely, that defendant engaged in the illicit sexual conduct "immediately or soon after" the travel in foreign commerce.

In its December 3, 2007 Order Denying Defendant's Motion to Dismiss Indictment, this Court rejected defendant's argument that the word "and" in section 2423(c) means "immediately soon afterward," "next in order of time," or "then." This Court also stated that there is nothing in the text of § 2423(c) that could be interpreted as imposing any temporal relationship between the elements of the offense. This Court found that § 2423(c) imposes criminal liability on "[a]ny United States citizen or alien admitted for permanent residence who travels in foreign commerce, and engages in any illicit sexual conduct with another person," and that under that language, there is no requirement that the illicit sexual conduct occur within any period of time after travel.

Accordingly, the government requests that the Court give government's proposed instruction no. 4, not defendant's proposed instruction no. 2.

Exhibit C

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	CR No. CR 07-168 (A) -DSF
)	
Plaintiff,	)	<u>JURY INSTRUCTIONS</u>
)	
v.)	
)	
MICHAEL JOSEPH PEPE,)	
)	
Defendant.)	
)	

1 INSTRUCTION NO. _____

2

3 The defendant is charged in seven counts with traveling in
4 foreign commerce and engaging in illicit sexual conduct with
5 seven minor girls. In order for defendant to be found guilty of
6 these charges, the government must prove each of the following
7 elements beyond a reasonable doubt:

8 First, the defendant is a United States citizen;

9 Second, the defendant traveled in foreign commerce; and

10 Third, while in Cambodia, the defendant engaged in illicit
11 sexual conduct during the time and with the person alleged in the
12 particular count.

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Exhibit D

Counsel -

I have revised instruction numbers 14, 17 and 27. I have added language to 14, which is usually a separate instruction. I don't think it's necessary but I will add it if defense counsel wants it.

I have added instruction numbers 12, 13, 18.

I have made 2 instructions out of a previous instruction – numbers 22 and 23. I separated them to try to make clear that the preponderance of the evidence standard applies only to the defendant's burden. I have added "preponderance" language.

The current version of the Ninth Circuit instructions is reflected in instruction number 10. What the government proposed as Model Instruction 4.12 no longer exists. It does not seem appropriate to separate these into two or more instructions as all paragraphs relate to the same witness and separating them would be repetitive.

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	CR No. CR 07-168(A) -DSF
)	
Plaintiff,)	<u>JURY INSTRUCTIONS</u>
)	
v.)	
)	
MICHAEL JOSEPH PEPE,)	
)	
Defendant.)	
)	

INSTRUCTION NO. 20

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The defendant is charged in seven counts with traveling in foreign commerce and engaging in illicit sexual conduct with seven minor girls. In order for defendant to be found guilty of these charges, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant is a United States citizen;

Second, the defendant traveled in foreign commerce; and

Third, while in Cambodia, the defendant engaged in illicit sexual conduct during the time and with the person alleged in the particular count.

Exhibit E

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	CR No. CR 07-168 (A) -DSF
)	
Plaintiff,	)	<u>JURY INSTRUCTIONS</u>
)	
v.)	
)	
MICHAEL JOSEPH PEPE,)	
)	
Defendant.)	
)	

INSTRUCTION NO. 21

The defendant is charged in seven counts with traveling in foreign commerce and engaging in illicit sexual conduct with seven minor girls. In order for defendant to be found guilty of these charges, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant is a United States citizen;

Second, the defendant traveled in foreign commerce; and

Third, while in Cambodia, the defendant engaged in illicit sexual conduct during the time and with the person alleged in the particular count.

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5 Attorneys for Defendant
6 MICHAEL PEPE

7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION
10

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 MICHAEL PEPE,
15 Defendant.
16

Case No. CR-07-00168-DSF

Order

17
18 GOOD CAUSE HAVING BEEN SHOWN, IT IS HEREBY ORDERED THAT,
19 pursuant to Fed. R. App. Proc. 10(e), the record shall be corrected and modified to
20 reflect that the parties' Stipulation to Correct / Modify Record on Appeal re Jury
21 Instructions and Verdict Form accurately reflects the documents that were before the
22 Court during defendant's trial.

23 IT IS SO ORDERED.

24 3/2/15

25 DATED: _____



26 HON. DALE S. FISCHER

27 United States District Judge
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Submitted by:

/s/ Charles C. Brown

CHARLES C. BROWN

Deputy Federal Public Defender

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8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION
10

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 MICHAEL PEPE,
15 Defendant.
16

Case No. CR-07-00168-DSF

Order

17
18 GOOD CAUSE HAVING BEEN SHOWN, IT IS HEREBY ORDERED THAT,
19 pursuant to Fed. R. App. Proc. 10(e), the record shall be corrected and modified to
20 reflect that the parties' Stipulation to Correct / Modify Record on Appeal re Video
21 Testimony accurately reflects the video testimony that was presented at defendant's
22 trial.

23 IT IS SO ORDERED.

24 3/2/15

25 DATED: _____



26 HON. DALE S. FISCHER
United States District Judge

27 Submitted by:

28 /s/ Charles Brown

1 CHARLES C. BROWN
2 Deputy Federal Public Defender
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Attorney for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Case No. CR 07-168(A)-DSF
)
Plaintiff,	) <u>GOVERNMENT'S SENTENCING</u>
	) <u>POSITION</u>
)
v.	) Date: Sept. 25, 2008
	) Time: 2:30 p.m.
MICHAEL JOSEPH PEPE,	) Location: Courtroom of the
	) Honorable Dale S. Fischer
Defendant.)
)
)
)

Plaintiff United States of America hereby submits its
sentencing position. This position is based on the attached
memorandum of points and authorities, the Government's Submission
of Victim Impact and Restitution Information filed under seal
concurrently herewith, the Presentence Report, the

1 court to impose a sentence of 210 years because, among other
2 things, it may deter other predators. When he was in Phnom Penh
3 purchasing children for sex, defendant cut out newspaper articles
4 about other pedophiles. (PSR ¶ 52). Those articles were found
5 in defendant's residence by the Cambodian National Police and
6 introduced into evidence at trial. It is not uncommon for those
7 who sexually prey upon children to seek information about (and
8 validation from) other people who are sexually interested in
9 children. Unfortunately, as the evidence and testimony showed at
10 trial and as stated in Exhibit A hereto, the sale of children for
11 sex is not uncommon in Cambodia. Imposition of the maximum
12 available sentence in this case may deter other people like
13 defendant, who have traveled or plan to travel to southeast Asia
14 for sex with children. In addition, the government submits that
15 the statutory maximum sentence is warranted based on the
16 testimony and evidence presented at trial and on the victim
17 impact information, and for all of the reasons set forth in
18 Exhibit A and in the Probation Officer's recommendation letter.

19 **C. The Victims Are Entitled To Restitution**

20 The Mandatory Victims Restitution Act of 1996 (MVRA), 18
21 U.S.C. § 3663A, applies to this case. Under the MVRA, a
22 restitution order is mandatory regardless of a defendant's
23 ability to pay. 18 U.S.C. §§ 3663A(a)(1), 3664(f)(1)(A); see
24 also United States v. Grice, 319 F.3d 1174, 1177 (9th Cir. 2003).
25 In addition, even if the MVRA did not apply, the court would have
26 discretion under the Victim and Witness Protection Act (VWPA), 18
27 U.S.C. § 3663, to order restitution.

1 The government requests that the Court order defendant to
2 pay restitution to Agape International Missions, the entity that
3 has custody of and is caring for five of the seven victims, L.K.,
4 S.S., S.R., K.S. and T.C., and to Hagar International, the entity
5 that has custody of and is caring for two of the seven victims,
6 I.T. and N.T.D., in the amounts set forth in the Government's
7 Submission of Restitution Materials filed under seal concurrently
8 herewith. The victims' guardians from Agape and Hagar will
9 attend the sentencing hearing and be available to answer any
10 questions the Court may have regarding the restitution amounts.¹

11 Defendant has failed to comply with the court order
12 mandating certain financial disclosures to the Probation Office.
13 (PSR ¶ 185). The Probation Office has been unable to locate any
14 assets. (PSR ¶ 185). Defendant retired from the United States
15 Marines Corp., and he currently receives a monthly payment from
16 the Department of Defense, Defense Finance and Accounting Service
17 ("DFAS") for military retired pay.² The amount of his monthly
18 payment will increase, based on legislation, in October 2008.
19 The government respectfully requests that the Court issue an
20 order and writ of garnishment for the full amount of defendant's
21 DFAS payment, less the amount subject to a prior order. As there
22 are seven victims, five at Agape and two at Hagar, the government

24 ¹ They may seek to present any additional information to the
25 court in camera. See 18 U.S.C. § 3664(d)(4) ("The privacy of any
26 records filed, or testimony heard, pursuant to this section shall
be maintained to the greatest extent possible, and such records
may be filed or testimony heard in camera).

27 ² The amounts are set forth in a letter from DFAS that is in
28 the Government's Submission of Restitution Materials filed under
seal concurrently herewith.

1 requests that the garnished amount be apportioned five-sevenths
2 to Agape and two-sevenths to Hagar. A proposed order and writ of
3 garnishment is filed concurrently herewith.³

4 **1. The MVRA Applies to Defendant's Violations of 18 U.S.C.**
5 **§ 2423(c) Because They Are Crimes of Violence in which**
6 **Identifiable Victims Suffered Bodily Injuries**

7 Title 18, United States Code, Section 3663A provides in
8 pertinent part, "Notwithstanding any other provision of law, when
9 sentencing a defendant convicted of an offense described in
10 subsection (c), the court shall order, in addition to . . . any
11 other penalty authorized by law, that the defendant make
12 restitution to the victim of the offense" 18 U.S.C.
13 § 3663A(a)(1). The mandatory restitution provision applies to
14 sentencing proceedings for convictions of "any offense that is a
15 crime of violence, as defined in section 16 . . . and in which an
16 identifiable victim or victims has suffered a physical injury or
17 pecuniary loss." 18 U.S.C. §§ 3663A(c)(1)(A)(i), 3663A(c)(1)(B).

18 Section 16 defines a crime of violence as "(a) an offense
19 that has as an element the use, attempted use, or threatened use
20 of physical force against the person or property of another, or
21 (b) any offense that is a felony and that, by its nature,
22 involves a substantial risk that physical force against the
23 person or property of another may be used in the course of
24 committing the offense." 18 U.S.C. § 16.

25 ³ In addition to his retirement pay from DFAS, defendant
26 receives a monthly payment from the U.S. Department of Veteran's
27 Affairs ("VA"). VA counsel have informed government counsel
28 that, since defendant is an incarcerated beneficiary, under 38
CFR §§ 3.665(a) and (d), and 38 U.S.C. § 1114(a), defendant's
monthly compensation from the VA should be reduced to
approximately \$115, which is not subject to garnishment.

1 Defendant's offenses of conviction, 18 U.S.C. § 2423(c), do
2 not have as an element the use, attempted use, or threatened use
3 of physical force. The elements of § 2423(c) are (1) that
4 defendant is United States citizen; (2) that defendant traveled
5 in foreign commerce; and (3) that while in Cambodia, the
6 defendant engaged in illicit sexual conduct during the time and
7 with the person alleged in the particular count. Illicit sexual
8 conduct is defined as follows:

9 (1) a sexual act (as defined in section 2246) with a
10 person under 18 years of age that would be in violation
11 of chapter 109A if the sexual act occurred in the
special maritime and territorial jurisdiction of the
United States; or

12 (2) an commercial sex act (as defined in section 1591)
13 with a person under 18 years of age.

14 18 U.S.C. § 2423(f).

15 Section 2246 defines "sexual act" as follows:

16 (1) contact between the penis and the vulva or the
17 penis and the anus, and for purposes of this
subparagraph, contact involving the penis occurs upon
penetration, however, slight; or

18 (2) contact between the mouth and the penis, the mouth
19 and the vulva, or the mouth and the anus;

20 (3) the penetration, however slight, of the anal or
21 genital opening of another by a hand or finger or by
any object, with an intent to abuse, humiliate, harass,
degrade or arouse or gratify the sexual desire of any
person; or

22 (4) the intentional touching, not through the
23 clothing, of the genitalia of another person who has
24 not attained the age of 16 years with an intent to
abuse, humiliate, harass, degrade, or arouse or gratify
the sexual desire of any person.

25 18 U.S.C. § 2246(2). A "commercial sex act" is "any sex act, on
26 account of which anything of value is given to or received by any
27 person." 18 U.S.C. § 1591(c)(1).
28

1 A § 2423(c) violation meets the definition of a crime of
2 violence in § 16(b) because it does involve a substantial risk
3 that physical force against another person may be used, as in
4 fact happened in this case. Although the Ninth Circuit has not
5 specifically addressed whether § 2423(c) is a crime of violence
6 as defined in § 16, it has addressed a similar issue regarding
7 § 2423(b). Section 2423(c) prohibits travel in foreign commerce
8 and engaging in illicit sexual conduct. Section 2423(b)
9 prohibits travel in interstate or foreign commerce for the
10 purpose of engaging in illicit sexual conduct. In United States
11 v. Butler, 92 F.3d 960, 964 (9th Cir. 1996), the Ninth Circuit
12 stated that § 2423(b) is, by its nature, a crime of violence.
13 In Butler, the defendant was convicted under § 2423(b) after he
14 traveled interstate intending to engage in illicit sexual conduct
15 with three children in response to an advertisement and
16 subsequent correspondence with an undercover agent posing as the
17 mother of the fictional children. No children were actually
18 involved. Nonetheless, the court found that § 2423(b) violations
19 "are crimes of violence, and due to their dangerous nature,
20 attempts are treated the same as completed criminal acts." Id.
21 at 964.

22 Other courts addressing similar issues have reached the same
23 conclusion. See United States v. Searcy, 418 F.3d 1193 (11th
24 Cir. 2005) (18 U.S.C. § 2422(b) is a crime of violence for career
25 offender classification purposes, as "[p]lainly, the use of an
26 Internet facility to entice a minor to engage in sexual activity
27 [in violation of 18 U.S.C. § 2422(b)] presents the possibility of
28 an encounter that could result in a serious risk of physical

1 injury to the minor") (citations omitted); United States v.
2 Johnson, 183 F.3d 1175, 1179 (10th Cir. 1999) (rejecting defense
3 argument that 18 U.S.C. §§ 2422(b) and 2423(c) are not crimes of
4 violence under § 16 and affirming district court's application of
5 MVRA). Accordingly, § 2423(c) is a crime of violence as defined
6 in § 16(b). See 18 U.S.C. 3663A(c)(1)(A)(ii).

7 In addition, the identifiable victims suffered physical
8 injury. See 18 U.S.C. § 3553A(c)(1)(B). In this case, as the
9 trial testimony and evidence established, victims I.T., L.K,
10 K.S., N.T.D., and T.C. all suffered bodily injury from
11 defendant's sexual assaults on them. (PSR ¶¶ 16, 17, 20, 22, 23,
12 25, 33, 36, 38-40, 43, 45, 49). Although the injuries sustained
13 by S.R. and S.S. were not as severe as those of the other
14 victims, as set forth in the victim impact information filed
15 under seal, S.R. and S.S. suffered bodily injury from defendant's
16 crimes. Accordingly, defendant is convicted of an offense
17 described in 18 U.S.C. § 3663A(c), and the MVRA applies to this
18 case.⁴

19
20 ⁴ Even if defendant's crimes did not qualify for application
21 of the MVRA under 18 U.S.C. § 3663A(c), the discretionary
22 restitution provision, 18 U.S.C. § 3663, would apply. Section
23 3663 applies to convictions for any offense under Title 18. See
24 18 U.S.C. § 3663(a)(1)(A). Unlike the MRVA, however, § 3663
25 requires the Court to consider defendant's financial resources,
26 financial needs and earning ability. See 18 U.S.C.
27 § 3663(a)(1)(B)(i)(II). Neither indigence nor a present
28 inability to pay precludes the imposition of restitution provided
there is "some evidence" in the record that defendant "may be
able to pay restitution in the amount ordered in the future."
United States v. Ramilo, 986 F.2d 333, 335 (9th Cir. 1993). The
sentencing court is not required to make factual findings on the
defendant's financial condition before imposing restitution.
United States v. Cannizzaro, 871 F.2d 809, 810-11 (9th Cir.),
cert. denied, 493 U.S. 895 (1989). The record simply must
reflect that the district court had at its disposal information

1 **2. The Seven Children are Victims Entitled to Restitution**

2 Each of the seven children in the seven counts of conviction
3 qualifies as a "victim" under the MVRA. A "victim" is defined as
4 "a person directly and proximately harmed as a result of the
5 commission of an offense for which restitution may be ordered."
6 18 U.S.C. § 3663A(a)(2). The victims' legal guardians - Agape
7 and Hagar - may receive the restitution on the victims' behalf.
8 The MVRA states that "[i]n the case of a victim who is under 18
9 years of age" the "legal guardian of the victim . . . or any
10 other person appointed as suitable by the court, may assume the
11 victim's rights under this section, but in no event shall the
12 defendant be named as such representative or guardian." 18
13 U.S.C. § 3663A(a)(2).

14 **3. The Restitution Amount Should Include the Costs of**
15 **Necessary Medical and Related Professional Services**
16 **relating to Physical, Psychiatric, and Psychological**
 Care and the Costs of Education, and Rehabilitation for
 the Seven Victims

17 When the crime results "in bodily injury to a victim" the
18 MVRA requires the court to order the defendant to do the
19 following:

20 (A) pay an amount equal to the cost of necessary
21 medical and related professional services and devices
22 relating to physical, psychiatric, and psychological
23 care, including nonmedical care and treatment rendered
24 in accordance with a method of healing recognized by
 the law of the place of treatment;

24 (B) pay an amount equal to the cost of necessary
 physical and occupational therapy and rehabilitation;

25 _____

26 bearing on defendant's ability to pay. Id. at 811.

27 In this case, defendant will serve the rest of his life in
28 prison, and will continue to be entitled to receive military
 retirement pay from DFAS. Defendant has no dependants.
 Defendant thus has the ability to pay restitution to the victims.

1 and

2 (C) reimburse the victim for income lost by such
3 victim as a result of such offense.

4 18 U.S.C. § 3636A(b)(2); See United States v. Cliatt, 338 F.3d
5 1089, 1091 (9th Cir. 2003) (language of § 3663A(b)(2)(A)
6 "expresses Congress' intention that a defendant must, in every
7 case involving bodily injury, pay what it costs to care for the
8 victim, whether or not the victim paid for the care or was
9 obligated to do so"); United States v. Johnson, 400 F.3d 187, 200
10 (4th Cir. 2005) ("The careful choice of words [in
11 § 3663A(b)(2)(A)] indicates a legislative intent to require those
12 convicted of crimes resulting in bodily injury to pay the entire
13 'amount equal to the cost of necessary medical . . . services,'
14 even when the provider of those services has not taxed the victim
15 herself with the full amount of those costs") (citing 18 U.S.C.
16 § 3663A(b)(2)(A)).⁵

17 The government requests that the court order restitution to
18 be paid to Agape and Hagar, to pay for the physical, psychiatric,
19 and psychological care, as well as occupational therapy and
20 rehabilitation. The victims are children who, as a result of
21 defendant's purchasing them and using them for his sexual
22 gratification, are in the custody and care of Agape and Hagar,
23 where they will remain until they are 18 years old. The costs
24 that Agape and Hagar have incurred and will continue to incur for
25 the rehabilitation from the horrors of what defendant did to them

26
27 ⁵ See also United States v. Hicks, 997 F.2d 594, 601 (9th
28 Cir. 1993) (costs of psychological counseling can be included in
restitution order under 3663 only when the victim has suffered
physical injury).

1 for their occupational therapy, i.e. education for child victims
2 whose ability to learn has been diminished by defendant's crimes,
3 and for their physical and psychological care are set forth in
4 the materials filed concurrently herewith. The government
5 requests restitution for both the costs that Agape and Hagar have
6 incurred over the past two years, since mid 2006 when the victims
7 arrived at these non-governmental organizations, and the future
8 costs that Agape and Hagar will incur for the rehabilitation,
9 occupational therapy, and physical and psychological care
10 necessitated by defendant's crimes against the victims.

11 As the Ninth Circuit explained in affirming a restitution
12 order for psychological and medical treatment, vocational
13 training, and management fee to the non-governmental organization
14 caring for the victims, and start-up capital to aid the victims
15 in opening a business in United States v. Doe, 488 F.3d 1154 (9th
16 Cir. 2007):

17 We emphasize that this is a unique case. Doe traveled
18 outside the United States to molest children in his
19 native country. As such, he not only gets the windfall
20 of paying only reduced developing-world rates, but the
21 government is also hindered in its ability to
22 investigate his remote activity, to locate all of the
23 victims of his criminal conduct, and to provide
24 supervision of the children's recovery. In a situation
25 such as this, where all the child victims are minors in
26 a foreign country, the government necessarily must
27 contract with reputable outside organizations to
28 preform services that might be readily available by
more familiar institutions in the United States.

Doe, 488 F.3d at 1162.

25 In addition, the Ninth Circuit has approved restitution for
26 future counseling for child sex abuse victims. See United States
27 v. Laney, 189 F.3d 954, 966 (9th Cir. 1999) (future counseling
28 expenses may be included in amount of restitution). Although the

1 court in Laney was interpreting 18 U.S.C. § 2259, the mandatory
2 restitution provision applicable to violations of Chapter 110 of
3 Title 18, rather than 18 U.S.C. § 3663A, the mandatory
4 restitution provision applicable here, the court's reasoning
5 applies to this case. Sections 2559 and 3663A both direct that
6 restitution orders be issued and enforced in accordance with
7 § 3664.

8 In Laney, the defendant objected to the restitution order
9 including future counseling expenses on the ground that
10 § 3664 has a mechanism for compensating the cost of future
11 therapy. Section 3664 directs victims who subsequently discover
12 further losses to petition the court within 60 days of that
13 discovery for an amended restitution order, which the court may
14 grant only if the victim shows good cause for failing previously
15 to inform the court of the loss. 18 U.S.C. 3664(d)(5); Laney,
16 189 F.3d at 966-67. In rejecting this argument, the court stated
17 that the victim and her family "will not 'discover' in the future
18 that they need counseling; they already know that they do," and
19 "[i]f Congress intended crime victims who required long-term
20 psychological or physical therapy to receive restitution only
21 after they actually paid their therapists, it created a strangely
22 unwieldy procedure in section 3664, which would require a victim
23 to petition the court for an amended restitution order every 60
24 days for as long as the therapy lasted." Id. at 967. As in
25 Laney, the victims in this case already know that they will need
26 counseling in the future. Accordingly, the government requests
27 that the restitution order include future counseling expenses.
28 Like the defendant in Doe, 488 F.3d at 1162, defendant's

1 restitution amount is much smaller than it would be if his
2 victims were located in the United States rather than in a
3 developing country.

4 In addition, as in Doe, 488 F.3d at 1162, the restitution
5 amount will provide assistance to only a fraction of the victims
6 whom defendant sexually violated. Defendant's computer contained
7 photographs, including sexually explicit photographs, of minor
8 girls in addition to the victims in this case. United States
9 Immigration and Customs Enforcement and non-governmental
10 organizations have gone to great effort to attempt to locate and
11 provide assistance to these additional victims. Unfortunately,
12 to date those efforts have been unsuccessful. Also, since there
13 is no evidence that defendant photographed every one of his
14 victims and saved the images on the media found by law
15 enforcement, and since his travels to Cambodia predate his 2005
16 acquisition of the seized computer media, there are likely many
17 more victims than those known to law enforcement. Thus, the
18 requested restitution amount for the identified victims is only a
19 small fraction of what defendant owes his numerous child victims.

20 III

21 CONCLUSION

22 For the foregoing reasons, the government respectfully
23 requests that the Court sentence defendant to 210 years in
24 custody, lifetime supervised release, a \$700 special assessment,
25 and restitution for the seven child victims.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE DALE S. FISCHER

UNITED STATES DISTRICT JUDGE PRESIDING

United States of America,)

Plaintiff,)

)

vs.)

Case No. CR 07-168-DSF

)

Michael Joseph Pepe,)

Defendant.)

)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Thursday, September 25, 2008

Pamela A. Seijas, CSR, FCRR, RPR, RMR
Official Reporter
Roybal Federal Building
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1 APPEARANCES:

2
3 FOR THE GOVERNMENT: OFFICE OF THE UNITED STATES ATTORNEY
4 BY: PATRICIA DONAHUE
5 ASSISTANT UNITED STATES ATTORNEY
6 JOHN LULEJIAN
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9 LOS ANGELES, CA 90012
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13 FOR DEFENDANT: OFFICE OF THE FEDERAL PUBLIC DEFENDER
14 BY: CARL GUNN
15 DEPUTY FEDERAL PUBLIC DEFENDER
16 CHARLES BROWN
17 DEPUTY FEDERAL PUBLIC DEFENDER
18 321 EAST SECOND STREET
19 LOS ANGELES, CA 90012
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21

22 INTERPRETERS: ANN SPIRATOS
23 MORYVANN PAIGNE
24
25

Los Angeles, California, Thursday, September 25, 2008

2:35 p.m.

-oOo-

THE CLERK: Calling Item No. 2, CR 07-168(A)-DSF,
United States of America vs. Michael Joseph Pepe.

MS. DONAHUE: Good afternoon, your Honor. Patricia Donahue and John Lulejian on behalf of the United States. And there are a number of other people that I would like to introduce after the Court takes the defense appearance.

THE COURT: Thank you.

MR. BROWN: Good afternoon, your Honor. Charles Brown and Carl Gunn on behalf of Mr. Pepe, who is present in custody.

THE COURT: Good afternoon.

Ms. Donahue?

MS. DONAHUE: Also in court today seated behind me are the seven victims in this case: I.T., L.K.xxx, S.R.xxx, S.S.xxx, NTDx, T.C.xx, and K.S.x. they are here with the guardians who accompanied them when they testified -- Sok Sinn, Sambo Lim and Sissarat Kheng -- as well as Sue Taylor, their guardian from Hagar, and Don and Bridget Brewster, the guardians from Agape International Mission, and of course the case agents, Special Agent Eddy Wang and Gary Phillips.

THE COURT: Thank you. Welcome to all of you.

This is the first phase of a bifurcated sentencing hearing. The bifurcation was ordered for the reasons stated on

1 the record on September 18.

2 The purpose of this portion of the hearing is to
3 afford the victims and others the opportunity to present
4 statements and to allow the Court to ask questions and address
5 the victims.

6 The information presented will be considered by the
7 Court in determining and imposing the sentence at the second
8 phase of the sentencing hearing.

9 Ms. Donahue, would any of the victims like to address
10 the Court, or anyone else on their behalf?

11 MS. DONAHUE: Yes, your Honor.

12 And I'm going to say -- if there are any of the
13 victims who would like to address the Court, I'm going to ask
14 sort of first and last and then maybe some their representatives
15 who might want to come forward.

16 THE COURT: Sure. And if they want to speak, they can
17 speak from wherever they want. They can come up here. Wherever
18 we have a microphone. Wherever they are more comfortable.

19 MS. DONAHUE: Thank you, your Honor. We actually
20 brought a stool to put here so they can speak into this
21 microphone, if they would like to.

22 I should also note we have Ann Spiratos and Moryvann
23 Paigne, who are the Vietnamese and Khmer interpreters
24 respectively, who were present at trial.

25 THE COURT: Thank you.

1 MS. DONAHUE: Your Honor, this is NTDx.

2 THE COURT: Hello, NTDx.

3 NTDx: Yes.

4 THE COURT: Would you like to talk to me?

5 NTDx: Yes.

6 THE COURT: What would you like to say?

7 NTDx: I want to say that I want to come here so I
8 could go to school. I want to be here so I can take care of my
9 future. I would like to be here so I can learn and go to school
10 so I can speak English. That's all.

11 THE COURT: Okay. Thank you very much.

12 KHENG SISARAT: Hello. With your Honor's respect, my
13 name is Kheng Sisarat. I work at International Agape.

14 T.C.xx is my responsibility that was violated by
15 Michael. When I spoke with her, T.C.xx told me that *Michael*
16 *raped me*. All this that I have talked with her made me have --
17 I go through so many pain for them.

18 And Michael, what he did to T.C.xx, it made her
19 suffer, her life suffer. And she's hopeless and she despair.
20 She feels that she has no value and afraid for her future. And
21 she hates herself. She blames herself that Michael -- what he
22 did to her.

23 But today I'm very happy that this Court here come to
24 this process and that the law that you made here as far -- for
25 example, as for Michael, it's justice.

1 I do not want to see other kids go through this again.
2 It doesn't matter who: Cambodians, Tai, Vietnam or American.
3 Or any nationalities.

4 In the end, I want to say thank you for the government
5 and the United States District Court that you help us out for
6 this matters as far as rape, no matter where. Thank you.

7 THE COURT: Thank you.

8 SOK SINN: Good afternoon, your Honor, and all the
9 attorneys here.

10 First of all, I like to thank God and all of the
11 attorneys and the Court that I am given this chance to be here
12 today so I can stand here to express my thoughts to you.

13 I have been the counselor for I.T. and NTDx. I have
14 learned a lot about their stories and their lives, plus the
15 person who harmed them, which is Michael.

16 The girls, they have told me a lot about what happened
17 inside their mind and their pain. They are very sad and feeling
18 miserable. They feel like they are worthless. Any time the
19 girls told me the stories like that, these two girls, they think
20 that their lives have nothing, no valuable, no life anymore.

21 After listening to their thoughts and what they have
22 told me, that make me think about this a lot. I wonder why this
23 happened to my own children, my own people. I wonder who would
24 help these children to get justice.

25 Even though I love them so much, I would not be able

1 to fill their void in their soul and life.

2 Two years ago, since I.T. and NTDx came into Hagar to
3 stay, I started to watch their mind and their behaviors. I feel
4 like I am not able to do anything for them.

5 Today I am grateful that God and the Court and the
6 attorneys have spent lots of time to help the children and also
7 to love them very much. And also being very fair for the
8 children, for my own kids.

9 Today I see the changes in I.T. and NTDx. I know one
10 thing for sure. Their future with the help of God and the
11 attorneys and the Court just bring good things to them,
12 compensate them, the fairness, and from now on, the children
13 wants to be somebody who can contribute to this society and this
14 life and also their wishes. I like to thank the Court.

15 THE COURT: Thank you.

16 Will the interpreters interpret for the girls, please.

17 Ladies, our lawmakers here in America have considered
18 it very important that victims of crimes be able to come and
19 speak and tell the judge about the impact that the crimes have
20 had on them. And so I don't want you to be afraid. This is a
21 safe place.

22 If any of the others of you want to speak to me, even
23 if it's just a few words, and tell me how you feel or anything
24 else that you want, please do that.

25 Does anyone else want to talk to me?

1 THE INTERPRETER: No, your Honor.

2 I apologize. S.S.xxx wants to say something.

3 THE COURT: Sure.

4 S.S.xxx: Hello. Hello.

5 THE COURT: Hello.

6 That's okay. Take all the time you need. Why don't
7 you tell me about school.

8 S.S.xxx: I am very happy that I came here, that I
9 visit here. I don't want any other children to be like us.
10 Please don't allow this to happen again. I would like to say
11 thank you.

12 THE COURT: Thank you.

13 Would anyone else like to speak? You can come up with
14 another girl or you can come up with your counselor.

15 K.S.x: Whatever he did to me, it's very painful. I
16 don't want him to do this to anyone anymore. I'm very happy
17 today. Thank you very much.

18 THE COURT: Thank you.

19 Ms. Donahue, for the record, who was that?

20 MS. DONAHUE: Your Honor, that was K.S.x.

21 THE COURT: Thank you.

22 Anyone else? Are you sure? You can tell me about
23 school, you can tell me about your classes.

24 MS. DONAHUE: Your Honor, this is S.R.xxx.

25 THE INTERPRETER: This is S.R.xxx.

1 S.R.xxx: Hello everyone. I want to say I do not want
2 this to happen again to any other children. When it happened to
3 us, it made us very painful.

4 I am very happy today because I see justice. I'm -- I
5 just want to say thank you that you helped me find justice here.

6 THE COURT: Thank you.

7 L.K.xxx: Hello. I want to say hello to everyone who
8 is here. And thank you for allowing me to be here to speak.
9 Thank you for helping me find justice and believe in me. Thank
10 you for the government. Thank you.

11 THE COURT: Thank you for coming here.

12 MS. DONAHUE: Your Honor, that's L.K.xxx.

13 THE COURT: Thank you.

14 MS. DONAHUE: Your Honor, this is I.T..

15 I.T.: Yes. I would like to thank the Court to allow
16 me to be here. I want to grow up to be a doctor. That's all.

17 THE COURT: Wonderful.

18 Is there another victim, Ms. Donahue, that wants to --

19 MS. DONAHUE: Yes, your Honor. This is T.C.xx.

20 T.C.xx: Thank you for finding -- for helping me find
21 justice. I do not want other female children to be like this --
22 me. Thank you.

23 THE COURT: Thank you.

24 MS. DONAHUE: Your Honor, NTDx, who spoke first, would
25 like to say something else to the Court.

1 THE COURT: That will be fine. Thank you.

2 NTDx: I want to tell the Court that I am grateful
3 that you found the truth for me. I'm very happy because the
4 Court find Michael is guilty. However, inside me is still very
5 painful. When this happened to me, I'm very sad for my life. I
6 never want this to happen to any other girls. I am very sad.

7 So many people worried for me about this. I like to
8 see this problem would never happen again with anyone else. I
9 would like to thank the Court.

10 THE COURT: Thank you.

11 Did I hear from all the victims?

12 MS. DONAHUE: You have heard from all of the victims,
13 and I think nobody else wants to come back. I was just
14 checking. They may change their minds, but right now, nobody
15 else wants to come forward.

16 THE COURT: That's fine.

17 MS. DONAHUE: This is Sue Taylor from Hagar.

18 THE COURT: Ms. Taylor.

19 SUE TAYLOR: Thank you, your Honor, for providing the
20 opportunity for us to come here. As you can hear in the voices,
21 the pain is still there. Outwardly they smile and they laugh,
22 but behind their eyes, it's silent pain.

23 My name is Sue Taylor, and I am the Senior Manager of
24 Hagar children's programs, and I have the privilege of caring
25 for I.T. and NTDx, both beautiful young girls, but both deeply

1 hurting young girls.

2 These girls have been betrayed by their families.
3 They have been betrayed by adults. They should have been able
4 to trust but have been looked down on by society and been shamed
5 by society for acts that they had no control over.

6 Even after many years of experience of working with
7 girls in Cambodia, like I.T. and NTDx, I still struggle to
8 understand the depth of the impact, for these girls have been
9 robbed of their childhood, been robbed of the ability to feel
10 safe, robbed of the ability to trust an adult who should have
11 instilled security and protection but instead instilled terror
12 and even the threat of death.

13 Your Honor, I don't think that any of us here today
14 truly understands how deeply the lives of these young girls have
15 been affected. Even after two years of living in a caring,
16 supportive, safe environment, these girls still experience high
17 levels of trauma and psychosocial impairment. Will they ever be
18 free from their inner nightmare?

19 It tears my heart to see the pain that is in their
20 eyes and to see their little bodies shaking just with coming
21 here today to express how they feel. I feel helpless to take
22 their pain away.

23 What right does one person have to selfishly inflict
24 such pain on one so young and powerless? The physical scars
25 will heal, but what about the emotional scarring? This is for

1 life.

2 You know, each new developmental stage that these
3 young girls go through will bring new challenges. When they
4 start to date, when they enter relationships or marriage or
5 childbirth, each new stage is going to bring new challenges, and
6 each time, there are going to be new ghosts that need to be
7 silenced from the past before they can experience any pleasure
8 or success in their life.

9 Trauma interrupts normal development and one's ability
10 to process and retain information, and these girls are up to
11 five years behind their chronological age for their peers in
12 their education. It's going to be a long road ahead for them to
13 ever catch up and to ever have any hopes in the future. It's a
14 journey.

15 What does the future hold for them? We will do our
16 best and we will remain committed. But I ask your Honor to
17 consider the depth of the impact of this crime on these young
18 lives and that you assist in every way possible to return to
19 them a future and a hope.

20 Thank you.

21 THE COURT: Thank you.

22 DON BREWSTER: I, too, want to thank you, your Honor,
23 for giving us this opportunity and just the process that we've
24 been able to go through here.

25 I do want to mention something I think about the

1 uniqueness of this situation. You've read, I'm sure, the girls'
2 Victim Impact Statements and understand the depth of that
3 trauma, which they're really not sharing here today.

4 THE COURT: I understand that.

5 DON BREWSTER: But that pain and that trauma that
6 they -- the physical and emotional part might be like something
7 that's happened here in this country, something you're used to
8 dealing with. And the same thing might be true of the healing
9 process where they're purging all this pain and really the evil
10 that they've had to endure. But the uniqueness is the culture
11 that they live in.

12 You see, the culture that they live in consider these
13 children as refuse now. This is something they're going to have
14 to fight the rest of their life, and as Sue mentioned, we can
15 bring healing. I believe God will bring healing to their
16 hearts, but they have a life sentence of overcoming what culture
17 thinks of them, through no fault of their own.

18 Your Honor, I believe that anything less than the
19 maximum sentence would truly fall far short of justice. I
20 believe that it would dishonor these kids and this sacrifice and
21 the courage they've shown to come here, and you've heard it from
22 them because they're concerned that it would happen to another
23 child.

24 And I just -- I don't -- I honestly don't believe
25 justice can be found in this case, but the maximum sentence will

1 be as close as we can possibly get.

2 And, Mr. Pepe, I'd like you to know that I've been
3 praying for you. I pray that you would redeem your life. And I
4 don't mean by that, by life, being a former pastor and being at
5 a Christian NGO -- I don't mean that you would fall on your
6 knees and say a prayer and ask for forgiveness.

7 But you have an opportunity to redeem your life, and
8 the fact that you would admit what you had done, that you would
9 take responsibility for torturing and raping little girls, that
10 you would step forward with the courage to do that, and that you
11 wouldn't be asking the Court for leniency. That you would
12 accept; again, take responsibility.

13 And, finally, spending the rest of your life in
14 prison, you have the opportunity to redeem your life by helping
15 law enforcement stop other pedophiles. You know names, you have
16 knowledge, you know places. You could stop other pedophiles if
17 you were willing to do that, if you were willing to have just a
18 small bit of the courage that these kids have shown after what
19 you've done to them.

20 And that's my prayer for you, that you would truly
21 redeem your life.

22 Thank you.

23 THE COURT: Thank you.

24 MS. DONAHUE: Your Honor, just for the record, that is
25 Don Brewster from Agape.

1 THE COURT: Thank you.

2 Would anyone else like to speak?

3 MS. DONAHUE: No, your Honor. I think that's it.

4 THE COURT: Thank you.

5 Would someone translate for the girls, please.

6 I want to thank the counselors and the caregivers for
7 coming here and speaking so well on behalf of these victims.

8 And I want to thank all of you girls for sending me
9 your statements and sending me the beautiful pictures that you
10 drew.

11 And I want to tell you that nothing that happened to
12 you was your fault. There is no reason for you to be
13 embarrassed or ashamed.

14 You are all very brave and strong to come here and
15 testify and to come here today and speak. And you should all be
16 very proud of yourselves for having the courage to do that.

17 Thank you all very much. You have helped our system
18 work because without you, justice would not have been achieved.
19 So you thanked me, but the thanks really go to you. Thank you.

20 THE INTERPRETER: Thank you.

21 THE COURT: I do have some questions about
22 restitution, Ms. Donahue, and I don't know that they need to be
23 resolved here, but as long as you do have people here who might
24 be witnesses, perhaps we should also ask Mr. Gunn and Mr. Brown
25 if they have any issues or any evidence that they are going to

1 want to address?

2 I have a couple of questions. You have provided
3 evidence about the counseling that's likely needed and the costs
4 of that. I wasn't sure why the counseling required a
5 translator.

6 Are there not counselors available who speak the
7 language of the children?

8 MS. DONAHUE: That request came from Hagar, and it is
9 my understanding they do not always have counselors who speak
10 Vietnamese, and in some instances, the preference is to have the
11 counseling done in Vietnamese.

12 The folks at Hagar -- I asked the same question of the
13 folks at Hagar who told me that, and they said it's not --
14 sometimes they have someone who speaks that language and
15 sometimes they don't, and when the counseling needs to be done
16 or when there is a need for intervention, they want to be able
17 to do it, even if they need to go through a translator.

18 THE COURT: Okay. I think it's somewhat obvious from
19 the testimony that I heard at the trial, and so forgive me for
20 raising it, but I think it's a justifiable question from the
21 defense perspective, and that is in all of the circumstances,
22 was it necessary for the girls to live at either Hagar or Agape?
23 Were there no other situations? It appears that one of them
24 might be with a foster family at this point.

25 MS. DONAHUE: At the time they were rescued in 2006,

1 there was absolutely no alternative to the aftercare shelters
2 that are being offered.

3 I think right now -- and certainly Sue Taylor and Don
4 Brewster can correct me if I'm wrong, so I'm glad you're asking
5 me this while they're here.

6 They are trying out a foster situation. I'm not sure
7 that it will work or that it is permanent. It is in a foster
8 family located in Cambodia. And my understanding is that -- and
9 this is only as to Hagar. This is not as to Agape.

10 My understanding is that Hagar still continues to
11 incur costs for caring for the children, even though they may be
12 physically with a foster family.

13 THE COURT: I guess my concern is looking ahead and
14 contemplating what might be the defense position -- and if it's
15 not the defense position and you're not going to argue this,
16 then we don't need to go into it.

17 Ordinarily there would be a need for evidence that
18 would support the request for restitution, and I don't know that
19 we have the evidence that shows why they need to be at one of
20 those facilities as opposed to being home with family.

21 MS. DONAHUE: Okay.

22 THE COURT: And that can be presented now or perhaps
23 it can be presented by way of declaration or affidavit, but I
24 think the defense has a right to ask for that, and unless they
25 are not asking for it, then we should get it in the best way

1 that she can get it for us.

2 MS. DONAHUE: I think both Sue Taylor and Don Brewster
3 can speak far more eloquently than I about why this really is
4 the only option for the girls.

5 Sue?

6 SUE TAYLOR: We have explored all opportunities for
7 the girls to go home. We maintain contact with their families
8 regularly, but neither of their families in my two cases have
9 been deemed to be safe families, so these two girls are now
10 living with a Vietnamese foster family, a mom and a dad.

11 But due to the unsafe nature of the community in which
12 the couple live, we've had to rent a property. And because of
13 the high incidence of trafficking in their community, we are
14 arranging a property in a safe community.

15 And so we have to pay this couple and we pay all of
16 the needs of the children. So they will have to remain in their
17 care until they are independent adults.

18 THE COURT: And the safety issue is the trafficking
19 issue?

20 THE WITNESS: The risk, yes, of re-trafficking is very
21 high.

22 THE COURT: Mr. Gunn, Mr. Brown, do you have any
23 questions that you want to ask?

24 MR. BROWN: May we have one moment?

25 THE COURT: You may.

1 (Mr. Gunn and Mr. Brown confer off the record)

2 MR. BROWN: Your Honor, we don't have any additional
3 questions at this time. If some questions do arise, perhaps we
4 can brief it for the Court and proceed by way of declaration.

5 THE COURT: That would be great. That's on this issue
6 or the counseling issue or costs or translators or anything?

7 MR. BROWN: Yes, your Honor.

8 THE COURT: Can we have someone from Agape?

9 DON BREWSTER: And our situation is the same as what
10 Sue Taylor just described. The girls in question, the five that
11 are with us, do not have safe families to be reintegrated to.

12 THE COURT: You've evaluated that for each of the
13 girls?

14 DON BREWSTER: Yes. Independently for each girl.

15 THE COURT: Again, Mr. Brown, do you have any
16 questions at this time?

17 MR. BROWN: No, your Honor. But we would like to
18 reserve the right to perhaps question the care provider
19 regarding some solutions that may come up. We don't have any at
20 this time.

21 THE COURT: They're here now and they don't live in
22 this country, so --

23 MR. BROWN: Certainly. I understand, your Honor.

24 The defense was not prepared to address those issues
25 at this time. So we are still researching our perspective on

1 that.

2 THE COURT: All right. Thank you.

3 As I indicated at the last hearing, I want the
4 government to investigate all options for either bringing the
5 children back or providing a way for them to watch, perhaps
6 through the Embassy.

7 Another thing I thought of and I -- this is just off
8 the top of my head - is simply videotaping the proceedings and
9 providing a videotape for them to be sent to them if they can't
10 watch the proceedings live.

11 I don't know the efficacy of doing any of those
12 things, but I do think that if there's anything at all that we
13 can do, that that's what Congress would have intended that we
14 do.

15 So you will look into all those things, Ms. Donahue?

16 MS. DONAHUE: Absolutely, your Honor.

17 THE COURT: Is there anything else we can do today?

18 MS. DONAHUE: No. That's everything.

19 Thank you very much, your Honor.

20 THE COURT: Anything from the defense?

21 MR. BROWN: No, your Honor.

22 THE COURT: Thank you all again for coming.

23 (Proceedings adjourned at 3:18 p.m.)
24
25

CERTIFICATE OF OFFICIAL REPORTER

COUNTY OF LOS ANGELES)
)
STATE OF CALIFORNIA)

I, Pamela A. Batalo, Federal Official Realtime Court Reporter, Registered Professional Reporter, in and for the United States District Court for the Central District of California, do hereby certify that pursuant to Section 753, Title 18, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Date: April 10, 2014

/s/ Pamela A. Batalo
Pamela A. Batalo, CSR No. 3593, FCRR, RMR
Federal Official Court Reporter

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9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION
11

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 MICHAEL PEPE,

16 Defendant.
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28

NO. CR 07-168-DSF

DEFENDANT'S SUPPLEMENTAL
FILING RE: RESTITUTION

DATE: March 26, 2009
TIME: 1:30 p.m.

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10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION
12

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 MICHAEL PEPE,

17 Defendant.
18 _____

NO. CR 07-168-DSF

DEFENDANT'S SUPPLEMENTAL
FILING RE: RESTITUTION


DATE: March 26, 2009
TIME: 1:30 p.m.

19
20 Defendant, MICHAEL PEPE, by and through his attorney of record, Deputy
21 Federal Public Defender Charles C. Brown, hereby files the following supplemental
22 filing addressing the issue of restitution in this case.
23

24 Respectfully submitted,

25 SEAN K. KENNEDY
Federal Public Defender

26
27 DATED: March 25, 2009

28 By 
CHARLES C. BROWN
Deputy Federal Public Defender

I.

INTRODUCTION

Pursuant to the mandatory restitution provisions of 18 U.S.C. § 2248, both the probation office and the government recommend that the court order restitution payments to Hagar International Missions and Agape – international charitable organizations that provided care for the victims in this case. The government concludes that Hagar is entitled to restitution in the amount of \$78,616.22. This amount includes the cost of past and future counseling services and care. Government’s Submission of Restitution Information at 2. The government concludes that Agape is entitled to restitution in the amount of \$282,296.35. This amount also includes the cost of past and future care. Government’s Submission of Restitution Information at 3. The defense contends that the requested restitution amount is improper under 18 U.S.C. § 2248.

II.

DISCUSSION

A.

Under 18 U.S.C. § 2248 Charitable Organizations Are Not “Victims” and Therefore are Not Entitled to Mandatory Restitution and Any Future Costs Would Be Speculative

In 2001, the Ninth Circuit analyzed whether a government funded crises center that provided services to a victim of sexual abuse at no cost to the victim was entitled to restitution under § 2248. *United States v. Follet*, 269 F.3d 996 (9th Cir. 2001). After a careful analysis of the statute, the *Follet* court concluded that § 2248 did not permit a restitution order requiring the defendant to pay restitution to the crisis center when (a) such services were provided free of charge and (b) such order would apply

1 to future costs that have not been yet incurred and are nothing more “than a mere
2 possibility.” *Id.* at 1002.

3 In *Follet*, the Court analyzed the district court’s authority to impose restitution,
4 recognizing that “Federal courts have no inherent power to award restitution, but may
5 do so only pursuant to statutory authority.” *Follet*, 269 F.3d at 999, citing *United*
6 *States v. Hicks*, 997 F.2d 594, 600 (9th Cir.1993). Thus, courts have such authority
7 under the Victim and Witness Protection Act of 1982 (“VWPA”), providing for
8 discretionary awards of restitution after conviction for certain crimes, 18 U.S.C. §
9 3663, and under the Mandatory Victims Restitution Act of 1996 (“MVRA”),
10 providing for mandatory restitution for crimes of violence and property offenses, 18
11 U.S.C. § 3663A. Finally, courts have authority under 18 U.S.C. § 2248, which
12 provides for mandatory restitution for crimes involving the “sexual abuse of a
13 minor.” *Follet*, 269 F.3d at 999.

14 To decide whether § 2248 permits a court to order restitution where the entity
15 providing services to the victim does not charge the victim for them, the *Follet* Court
16 began with language of the statute. *Id.* According to the statute,

17 section 2248 provides for mandatory orders of restitution in the “full
18 amount of the victim's losses” § 2248(a), (b)(1). Paragraph (3), in
19 turn, defines the term “full amount of the victim's losses” to include “any
20 costs incurred by the victim for medical services relating to physical,
21 psychiatric, or psychological care.” § 2248(b)(3)(A). The “victim” is
22 “the individual harmed as a result of a commission of a crime under this
23 chapter.” § 2248(c). Finally, any order of restitution under § 2248 is to
24 be “issued and enforced in accordance with section 3664 in the same
25 manner as an order under section 3663A.” § 2248(b)(2).

26 *Id.*

27 The *Follet* Court went on to conclude,

28 The Crisis Center “incurred” “costs ... for medical services

1 relating to psychological care” on account of Follet's crime.
2 That the Crisis Center was not the “victim” of Follet's crime,
3 however, seems obvious. The crime was sexual abuse of a minor,
4 a crime that may - indeed, usually will-result in psychological
5 harm to the girl abused. That the girl will seek and obtain
6 counseling for that harm is not, though, assured by the fact that
7 the crime was committed (although we may hope that she does),
8 and that she will seek such counseling, if she does, from a free
9 clinic rather than one for which she pays, while perhaps
10 predictable if one knows her economic circumstances, is certainly
11 not something one can foresee from the fact that the crime was
12 committed. So the connection between the commission of
13 statutory rape and the economic cost to the Crisis Center for the
14 services provided to Follet's niece is simply too attenuated to
15 bring the Crisis Center within the statutory definition of “victim.”
16 We conclude that the Crisis Center was not the victim of Follet's
17 crime, even though it ended up bearing some of the economic loss
18 Follet caused.

19 *Id.*

20 In other words, under the precise language of § 2248, “[a] cost for which the
21 victim will never have to pay because the services will be provided directly by a
22 governmental or charitable organization is not “incurred” by the victim, even if that
23 organization will incur costs for the benefit of the victim.” *Id.* Thus, § 2248 is
24 therefore different from other mandatory restitution provisions that use different
25 language “that may well permit orders of restitution to governmental or charitable
26 institutions that provide covered services to the victim.” *Id.* at 1000.

27 Here, both Hagar International Missions and Agape are international charitable
28 organizations that are funded by either private donations, governmental grants, or

1 both. They provided treatment and care to victims of the offense free of charge, even
2 though that have incurred costs as a result of their efforts. To that extent, they are
3 indistinguishable from crises center in *Follet*. As such, like the government funded
4 crisis center in that case, Hagar and Agape are not technically “victims” of the
5 offense and are therefore not entitled to mandatory restitution under the precise
6 language of § 2248.

7 Moreover, even assuming for the sake of argument that the Court finds
8 restitution proper in this case, much of the requested restitution amount is for the cost
9 of *future* care. Although the district court may in some instances order restitution in
10 a definite amount for future therapy, the government must provide proof of the need
11 for such therapy and a reasonable estimate of the cost of such future counseling.
12 *Follet*, at 1001, 1002. Here it does not appear that the estimated cost of care is
13 reasonable under the circumstances. For example, the government opines that in the
14 case of Agape, it is anticipated that five girls “will remain in Agape’s care for at least
15 three to five years.” Govt’s Submission of Restitution Information at 3. This request
16 is speculative at best. As noted above, as an initial matter, the government must
17 provide proof of the need for additional therapy. Speculation that the girls will
18 require and additional three to five years of therapy, without more, is insufficient to
19 support a request for future restitution.

20 /

21 /

22 /

23 /

24 /

25 /

26 /

27 /

28 /

III.

CONCLUSION

For the reasons set forth above, it is respectfully requested that this Court find that the requested restitution order is not proper in this case.

Respectfully submitted,

SEAN K. KENNEDY
Federal Public Defender

DATED: March 25, 2009

By 

CHARLES C. BROWN
Deputy Federal Public Defender

PROOF OF SERVICE

I, the undersigned, declare that I am a resident or employed in Riverside County, California; that my business address is the Federal Public Defender's Office, 3801 University Avenue, Suite 150; Riverside, California 92501; that I am over the age of eighteen years; that I am not a party to the above-entitled action; that I am employed by the Federal Public Defender for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California, and at whose direction I served the Defendant's Supplemental Filing Re: Restitution.

On March 25, 2009, following ordinary business practice, service was:

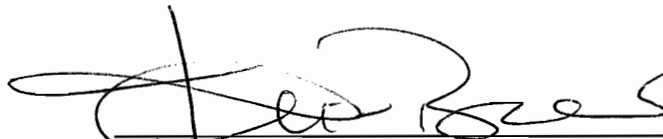
<input checked="" type="checkbox"/> Placed in a closed envelope, for collection and hand-delivery by our internal staff, addressed as follows:	<input type="checkbox"/> By hand-delivery addressed as follows:	<input type="checkbox"/> Placed in a sealed envelope for collection and mailing via United States Mail, addressed as follows:
--	---	---

Patricia A. Donahue
Assistant United States Attorney
John J. Lulejian
Assistant United States Attorney
United States Court House
312 North Spring Street, Suite
Los Angeles, California 90012 [ECF]

Pamela Chen
U.S. Probation Officer
312 N. Spring St., 6th Fl.
Los Angeles, CA 90012

This proof of service is executed at Riverside, California, on March 25, 2009.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.



Kristina Beck

**United States District Court
Central District of California**

UNITED STATES OF AMERICA vs.

Docket No.

CR 07-168 (A) DSFDefendant Michael Joseph Pepe

Social Security No. 2 5 4 4
 (Last 4 digits)

akas: _____

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
2	28	14

COUNSELCharles Brown, Deputy Federal Public Defender

(Name of Counsel)

PLEA

☒ **GUILTY**, and the court being satisfied that there is a factual basis for the plea. ☐ **NOLO** ☐ **NOT**
CONTENDERE **GUILTY**

FINDING

There being a finding/verdict of **GUILTY**, defendant has been convicted as charged of the offense(s) of:
 18 U.S.C. §2433(c): Engaging in Illicit Sexual Conduct with a Minor in Foreign Places - Counts 1 through 7 of the First Superseding Indictment

**JUDGMENT
AND PROB/
COMM
ORDER**

The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that defendant, Michael Joseph Pepe, is hereby committed on Counts 1 through 7 of the First Superseding Indictment to the custody of the Bureau of Prisons for a term of 210 years. This term consists of 30 years on each of Counts 1 through 7 of the First Superseding Indictment, to be served consecutively.

In the event defendant is released from prison, on release from imprisonment, the defendant shall be placed on supervised release for a term of life. This term consists of life on each of Counts 1 to 7, all such terms to run concurrently under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the U. S. Probation Office and General Order 318;
2. During the period of community supervision the defendant shall pay the special assessment and restitution in accordance with this judgment's orders pertaining to such payment;
3. The defendant shall cooperate in the collection of a DNA sample from the defendant;

Sex Offender Treatment and Conditions

4. The defendant shall register with the state sex offender registration agency in any state where the defendant resides, is employed, carries on a vocation, or is a student, as directed by the Probation Officer. The defendant shall provide proof of registration to the Probation Officer within 30 days of release from imprisonment;
5. The defendant shall participate in a psychological counseling and/or psychiatric treatment and/or a sex offender treatment program, which may include inpatient treatment, as approved and directed by the Probation Officer. The defendant shall abide by all rules, requirements, and conditions of such program, including submission to risk assessment evaluations and physiological testing, such as polygraph and Abel testing. The Probation Officer shall disclose the presentence report and any previous mental health evaluations or reports to the treatment provider;
6. As directed by the Probation Officer, the defendant shall pay all or part of the costs of treating the defendant's psychological/psychiatric disorder(s) to the aftercare contractor during the period of community supervision, pursuant to 18 U.S.C. § 3672. The defendant shall provide payment and proof of payment, as

USA vs. Michael Joseph PepeDocket No.: CR 07-168 (A) DSF

directed by the Probation Officer;

7. The defendant shall not possess any materials, including pictures, photographs, books, writings, drawings, videos, or video games, depicting and/or describing child pornography, as defined in 18 U.S.C. § 2256(8), except in connection with the preparation of an appeal;
8. The defendant shall not contact the victims by any means, including in person, by mail or electronic means, or via third parties. Further, the defendant shall remain at least 100 yards from the victims at all times. If any contact occurs, the defendant shall immediately leave the area of contact, and report the contact to the Probation Officer.
9. The defendant shall not associate or have verbal, written, telephonic, or electronic communication with any person under the age of 18, except: a) in the presence of the parent or legal guardian of said minor; and b) on the condition that the defendant notify said parent or legal guardian of his conviction in the instant offense. This provision does not encompass persons under the age of 18, such as waiters, cashiers, ticket vendors, etc., with whom the defendant must deal in order to obtain ordinary and usual commercial services;
10. The defendant shall not affiliate with, own, control, volunteer or be employed in any capacity by a business and or organization that causes him to regularly contact persons under the age of 18;
11. The defendant's employment shall be approved by the Probation Officer, and any change in employment must be pre-approved by the Probation Officer. The defendant shall submit the name and address of the proposed employer to the Probation Officer at least 10 days prior to any scheduled change;
12. The defendant shall not reside within direct view of school yards, parks, public swimming pools, playgrounds, youth centers, video arcade facilities, or other places primarily used by persons under the age of 18. The defendant's residence shall be approved by the Probation Officer, and any change in residence must be pre-approved by the Probation Officer. The defendant shall submit the address of the proposed residence to the Probation Officer at least 10 days prior to any scheduled move.

The drug testing condition mandated by statute is suspended based on the Court's determination that the defendant poses a low risk of future substance abuse.

The Court recommends that the Bureau of Prisons conduct a mental health evaluation of the defendant and provide all necessary treatment.

It is ordered that the defendant shall pay to the United States a special assessment of \$700, which is due immediately.

It is ordered that the defendant shall pay restitution in the total amount of \$247,213 pursuant to 18 U.S.C. § 2248.

The amount of restitution ordered shall be paid as follows:

<u>Victim</u>	<u>Amount</u>
Hagar International on behalf of victims I.T. & N.T.D.	\$ 35,400
Agape International Missions (AIM) for victims T.C., L.K., K.S., S.S., and S.R.	\$211,813

Any unpaid balance of the special assessment and restitution shall be due during the period of imprisonment, at the rate of not less than \$4,000 per month, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program. If any amount of the special assessment or the restitution remains unpaid if defendant is released from custody, monthly payments of at least \$4,000 shall be made during the period of supervised release. These payments shall begin 30 days after the commencement of supervision.

If the defendant makes a partial payment, each payee shall receive approximately proportional payment unless another priority order or percentage payment is specified in this judgment.

USA vs. Michael Joseph Pepe

Docket No.: CR 07-168 (A) DSF

The defendant shall comply with General Order No. 01-05.

All fines are waived as it is found that the defendant does not have the ability to pay a fine in addition to restitution.

The Court grants the government's request to dismiss the underlying Indictment in this matter.

The Court recommends that defendant be designated to a facility that is dedicated to the treatment and housing of sex offenders or has a sex offender treatment program.

The Court advised the defendant of the right to appeal this judgment.

SENTENCING FACTORS: The sentence is based on the factors set forth in 18 U.S.C. §3553, including the applicable sentencing range set forth in the guidelines, as more particularly reflected in the court reporter's transcript.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

2/28/14

Date



U. S. District Judge/Magistrate Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

2/28/14

Filed Date

By /s/ Debra Plato

Deputy Clerk

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

USA vs. Michael Joseph Pepe

Docket No.: CR 07-168 (A) DSF

1. The defendant shall not commit another Federal, state or local crime;
2. the defendant shall not leave the judicial district without the written permission of the court or probation officer;
3. the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
4. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
5. the defendant shall support his or her dependents and meet other family responsibilities;
6. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
7. the defendant shall notify the probation officer at least 10 days prior to any change in residence or employment;
8. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
9. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;
10. the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
11. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
12. the defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
13. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
14. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to conform the defendant's compliance with such notification requirement;
15. the defendant shall, upon release from any period of custody, report to the probation officer within 72 hours;
16. and, for felony cases only: not possess a firearm, destructive device, or any other dangerous weapon.

USA vs. Michael Joseph PepeDocket No.: CR 07-168 (A) DSF☒

The defendant will also comply with the following special conditions pursuant to General Order 01-05 (set forth below).

STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS

The defendant shall pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment pursuant to 18 U.S.C. §3612(f)(1). Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed prior to April 24, 1996.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant shall pay the balance as directed by the United States Attorney's Office. 18 U.S.C. §3613.

The defendant shall notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. §3612(b)(1)(F).

The defendant shall notify the Court through the Probation Office, and notify the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. §3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution-pursuant to 18 U.S.C. §3664(k). See also 18 U.S.C. §3572(d)(3) and for probation 18 U.S.C. §3563(a)(7).

Payments shall be applied in the following order:

1. Special assessments pursuant to 18 U.S.C. §3013;
2. Restitution, in this sequence:
 - Private victims (individual and corporate),
 - Providers of compensation to private victims,
 - The United States as victim;
3. Fine;
4. Community restitution, pursuant to 18 U.S.C. §3663(c); and
5. Other penalties and costs.

SPECIAL CONDITIONS FOR PROBATION AND SUPERVISED RELEASE

As directed by the Probation Officer, the defendant shall provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure; and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant shall not apply for any loan or open any line of credit without prior approval of the Probation Officer.

The defendant shall maintain one personal checking account. All of defendant's income, "monetary gains," or other pecuniary proceeds shall be deposited into this account, which shall be used for payment of all personal expenses. Records of all other bank accounts, including any business accounts, shall be disclosed to the Probation Officer upon request.

The defendant shall not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on	_____	to	_____
Defendant noted on appeal on	_____		
Defendant released on	_____		
Mandate issued on	_____		
Defendant's appeal determined on	_____		
Defendant delivered on	_____	to	_____

USA vs. Michael Joseph Pepe Docket No.: CR 07-168 (A) DSF

at _____
the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

By _____
Date Deputy Marshal

CERTIFICATE

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

By _____
Filed Date Deputy Clerk

FOR U.S. PROBATION OFFICE USE ONLY

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____
Defendant Date

U. S. Probation Officer/Designated Witness Date

Name Charles C. Brown (No. 179365)
 Address 321 E. 2nd Street
 City, State, Zip Los Angeles, CA 90012
 Phone (213) 894-1700
 Fax (213) 894-0081
 E-Mail Charles_Brown@fd.org
☒ FPD ☐ Appointed ☐ CJA ☐ Pro Per ☐ Retained

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

PLAINTIFF(S),

v.

MICHAEL JOSEPH PEPE,

DEFENDANT(S).

CASE NUMBER:

CR 07-00168-DSF

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Michael Joseph Pepe hereby appeals to
Name of Appellant
 the United States Court of Appeals for the Ninth Circuit from:

Criminal Matter☒ Judgment☐ Interlocutory Appeals☐ Bail status:**Civil Matter**☐ Order (specify):☐ Judgment (specify):☐ Other (specify):

Imposed or Filed on February 28, 2014. Entered on the docket in this action on February 28, 2014.

A copy of said judgment or order is attached hereto.

March 3, 2014
 Date

/s/ Charles C. Brown
 Signature
☐ Appellant/ProSe ☒ Counsel for Appellant ☐ Deputy Clerk

Note: The Notice of Appeal shall contain the names of all parties to the judgment or order and the names and addresses of the attorneys for each party. Also, if not electronically filed in a criminal case, the Clerk shall be furnished a sufficient number of copies of the Notice of Appeal to permit prompt compliance with the service requirements of FRAP 3(d).

**UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF
CALIFORNIA (Western Division – Los Angeles)
CRIMINAL DOCKET FOR CASE #: 2:07-cr-00168-DSF-1**

Case title: USA v. Pepe

Magistrate judge case number: 2:06-mj-01717-DUTY

Date Filed: 03/08/2007

Date Terminated: 02/28/2014

Assigned to: Judge Dale S.
Fischer

Appeals court case number:
14-50095 9th CCA

Defendant (1)

Michael Joseph Pepe

TERMINATED: 02/28/2014

represented by **Carlton F Gunn**

Kaye McLane Bednarski and Litt LLP
234 East Colorado Boulevard Suite 230
Pasadena, CA 91101
626-844-7660

Fax: 626-844-7670

Email: cgunn@kmbllaw.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

*Designation: Public Defender or Community Defender
Appointment*

Charles C Brown

Federal Public Defenders Office

321 East 2nd Street

Los Angeles, CA 90012-4202

213-894-1700

Fax: 213-894-0081

Email: zzCAC_FPD_Document_Receiving@fd.org

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

*Designation: Public Defender or Community Defender
Appointment*

James H Locklin

Federal Public Defenders Office

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Pending Counts

18:2423(c) ENGAGING IN
ILLCIT SEXUAL CONDUCT
WITH A MINOR IN
FOREIGN PLACES
(1-2)

18:2423(c): ENGAGING IN
ILLCIT SEXUAL CONDUCT
WITH A MINOR IN

Disposition

The Court grants the governments request to dismiss the
underlying Indictment in this matter.

Pursuant to the Sentencing Reform Act of 1984, it is the
judgment of the Court that defendant, Michael Joseph
Pepe, is hereby committed on Counts 1 through 7 of the

Pepe ER 2013

Case: 2:07-cr-00168-DSF As of: 05/13/2015 01:01 PM PDT 2 of 40

FOREIGN PLACES
(1s-6s)

First Superseding Indictment to the custody of the Bureau of Prisons for a term of 210 years. This term consists of 30 years on each of Counts 1 through 7 of the First Superseding Indictment, to be served consecutively. Supervised Release for a term of life. comply with the rules and regulations of the U. S. Probation Office and General Order 318 and General Order No. 01-05.. A special assessment of \$700 is due immediately. Restitution in the amount of \$242,213 pursuant to USC 2248. All fines waived. The Court grants the governments request to dismiss the underlying Indictment in this matter.

18:2423(c): ENGAGING IN
ILLICIT SEXUAL CONDUCT
WITH A MINOR IN
FOREIGN PLACES
(7s)

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that defendant, Michael Joseph Pepe, is hereby committed on Counts 1 through 7 of the First Superseding Indictment to the custody of the Bureau of Prisons for a term of 210 years. This term consists of 30 years on each of Counts 1 through 7 of the First Superseding Indictment, to be served consecutively. Supervised Release for a term of life. comply with the rules and regulations of the U. S. Probation Office and General Order 318 and General Order No. 01-05.. A special assessment of \$700 is due immediately. Restitution in the amount of \$242,213 pursuant to USC 2248. All fines waived. The Court grants the governments request to dismiss the underlying Indictment in this matter.

**Highest Offense Level
(Opening)**

Felony

Terminated Counts

None

Disposition

**Highest Offense Level
(Terminated)**

None

Complaints

18:2423.F COERCION OR
ENTICEMENT OF MINOR
FEMALE

Disposition

Respondent

Agape International Mission

represented by **Steven Clifford Bailey**
Law Office of Steven C. Bailey
3980 Missouri Flat Rd – Suite 201
Placerville, CA 95667
530-626-4906
Fax: 530-626-5623
TERMINATED: 05/13/2010

Plaintiff

USA

represented by **Patricia Ann Donahue**
AUSA – Office of US Attorney

Pepe ER 2014

Criminal Div – US Courthouse
 312 North Spring Street 13th Floor
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 213-894-0640
 Fax: 213-894-6436
 Email: Patricia.Donahue@usdoj.gov
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ATTORNEY TO BE NOTICED

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 213-894-8603
 Fax: 213-894-3713
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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/27/2006	<u>1</u>	COMPLAINT filed as to Defendant Michael Joseph Pepe in violation of 18:2423.F COERCION OR ENTICEMENT OF MINOR FEMALE. Approved by Magistrate Judge Victor B. Kenton as to Michael Joseph Pepe (1). (ca) [2:06-mj-01717-DUTY] (Entered: 10/03/2006)
02/07/2007	<u>2</u>	REPORT COMMENCING CRIMINAL ACTION as to Defendant Michael Joseph Pepe; defendants Year of Birth: 1953; date of arrest: 2/7/2007 (rm,) [2:06-mj-01717-DUTY] (Entered: 02/13/2007)
02/08/2007	<u>3</u>	MINUTES OF INITIAL APPEARANCE ON LOCAL COMPLAINT held before Magistrate Judge Jennifer T. Lum as to Defendant Michael Joseph Pepe. Defendant arraigned and advised of the charges. Attorney: Charles C Brown for Michael Joseph Pepe, DFPD, present. Court orders defendant permanently: detained. Defendant remanded to the custody of the USM. Post-Indictment Arraignment set for 3/12/2007 08:30 AM before Duty Magistrate Judge. Tape #: 07-103. (rm,) Modified on 2/13/2007 (rm,). [2:06-mj-01717-DUTY] (Entered: 02/13/2007)
02/08/2007	<u>4</u>	FINANCIAL AFFIDAVIT filed as to Defendant Michael Joseph Pepe. (Not for Public View pursuant to the E-Government Act of 2002) (rm,) Modified on 2/13/2007 (rm,). [2:06-mj-01717-DUTY] (esa). Modified on 10/10/2014 (esa). (Entered: 02/13/2007)
02/08/2007	<u>5</u>	WAIVER of Preliminary Examination or Hearing by Defendant Michael Joseph Pepe (rm,) [2:06-mj-01717-DUTY] (Entered: 02/13/2007)
02/08/2007	<u>6</u>	NOTICE DIRECTING DEFENDANT TO APPEAR for Preliminary Hearing and Arraignment on Indictment/Information. Defendant Michael Joseph Pepe is directed to appear and for Post Indictment Arraignment on 3/12/07 at 8:30 A.M. before the Duty Magistrate Judge. (rm,) Modified on 2/13/2007 (rm,). [2:06-mj-01717-DUTY] (Entered: 02/13/2007)
02/08/2007	<u>7</u>	ORDER OF DETENTION by Magistrate Judge Jennifer T. Lum as to Defendant Michael Joseph Pepe, (rm,) [2:06-mj-01717-DUTY] (Entered: 02/13/2007)

Case: 2:07-cr-00168-DSF As of: 05/13/2015 01:01 PM PDT 4 of 40

02/09/2007	<u>8</u>	ARREST WARRANT RETURNED Executed on 2/8/07 as to Defendant Michael Joseph Pepe. (ghap,) [2:06-mj-01717-DUTY] (Entered: 02/15/2007)
02/20/2007	<u>9</u>	ABSTRACT OF COURT PROCEEDINGS Returned Executed as to Michael Joseph Pepe Abstract received on 02/09/07. The aforementioned order was complied with on 02/09/07 and 02/12/07. (rts,) [2:06-mj-01717-DUTY] (Entered: 02/27/2007)
03/08/2007	<u>10</u>	INDICTMENT Filed as to Michael Joseph Pepe (1) count(s) 1-2. (ab,) (Entered: 03/12/2007)
03/08/2007	<u>11</u>	CASE SUMMARY filed by AUSA Patricia A. Donahue as to Defendant Michael Joseph Pepe; defendants Year of Birth: 1953. (ab,) (Entered: 03/12/2007)
03/08/2007	<u>12</u>	MEMORANDUM filed by Plaintiff USA as to Defendant Michael Joseph Pepe. This criminal action, being filed on 3/8/07, is not pending in the U. S. Attorneys Office before the date on which Judge Stephen G. Larson began receiving criminal matters. (ab,) (Entered: 03/12/2007)
03/08/2007	<u>13</u>	MEMORANDUM filed by Plaintiff USA as to Defendant Michael Joseph Pepe. is seeking authority for an investigative action, does not relate to Magistrate Judge Jacqueline Chooljian, Patrick J. Walsh, Jennifer T. Lum, Jeffrey W. Johnson. (ab) (Entered: 03/12/2007)
03/12/2007	<u>14</u>	MINUTES OF POST-INDICTMENT ARRAIGNMENT: held before Magistrate Judge Jennifer T. Lum as to Michael Joseph Pepe (1) Count 1-2,1-2. Defendant arraigned, states true name: as charged. Defendant entered not guilty plea to all counts as charged. Attorney: Special Appearance by Angel Navarro for Charles C Brown, DFPD. Jury Trial set for 5/1/2007 at 09:00 AM before Judge Dale S. Fischer. Status Conference set for 3/19/2007 at 08:30 AM before Judge Dale S. Fischer. Pretrial Conference set for 3/19/2007 at 08:30 AM before Judge Dale S. Fischer. Defendant and counsel are ordered to appear before said judge at the time and date indicated. Tape #: CS 03/12/2007. (vm,) (Entered: 03/13/2007)
03/12/2007	<u>15</u>	STATEMENT OF CONSTITUTIONAL RIGHTS filed by Defendant Michael Joseph Pepe (vm,) (Entered: 03/13/2007)
03/19/2007	<u>16</u>	MINUTES OF Status Conference held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe; counsel advise the court of their respective trial readiness and mutually indicate that a continuance of trial date will be necessary; the court directs counsel to contact the clerk regarding viable new trial date will be necessary; the court directs counsel to contact the clerk regarding a viable new trial date and submit the appropriate stipulation with a proposed order pursuant to the Speedy Trial Act. Court Reporter: Pamela Seijas. (ab,) (Entered: 03/22/2007)
04/25/2007	<u>17</u>	STIPULATION to Continue Trial Date from May 1, 2007 to January 29, 2008 filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order Regarding Continuance Of Trial Date and Excludable Time Periods Under Speedy Trial Act) (Donahue, Patricia) (Entered: 04/25/2007)
04/26/2007	<u>18</u>	ORDER REGARDING CONTINUANCE OF TRIAL DATE AND EXCLUDABLE TIME PERIODS UNDER SPEEDY TRIAL ACT by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, re Stipulation to Continue, <u>17</u> . Jury Trial continued to 1/29/2008 08:00 AM; Pretrial Conference continued to 1/7/2008 08:30 AM before Judge Dale S. Fischer. (ab,) (Entered: 04/30/2007)
06/18/2007	<u>19</u>	NOTICE OF MOTION AND MOTION for Discovery of COMPUTER EVIDENCE Filed by Defendant Michael Joseph Pepe Motion set for hearing on 7/9/2007 at 08:30 AM before Judge Dale S. Fischer. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C# <u>4</u> Exhibit D)(Gunn, Carlton) (Entered: 06/18/2007)
06/22/2007	<u>20</u>	NOTICE of Change of Attorney Information for attorney Carlton F Gunn counsel for Michael Joseph Pepe. Adding CARLTON F. GUNN as attorney as counsel of record for MICHAEL JOSEPH PEPE for the reason indicated in the G-06 Notice. Filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 06/22/2007)
06/26/2007	<u>21</u>	NOTICE OF MOTION AND MOTION to Suppress EVIDENCE <i>MEMORANDUM OF POINTS AND AUTHORITIES</i> Filed by Defendant Michael Joseph Pepe Motion set for hearing on 7/30/2007 at 08:30 AM before Judge Dale S. Fischer. (Attachments: # <u>1</u>

		Exhibit A thru I)(Gunn, Carlton) (Entered: 06/26/2007)
06/27/2007	<u>22</u>	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents. The following deficiency was found: Table of Contents was placed at the end of document: RE MOTION to Suppress EVIDENCE <i>MEMORANDUM OF POINTS AND AUTHORITIES</i> <u>21</u> (cbr) (Entered: 06/27/2007)
07/03/2007	<u>23</u>	EX PARTE APPLICATION to Continue Discovery Hearing Dates and Suppression Motion from July 9, 2007 (Discovery Motion); July 30, 2007 (Suppression Motion) to July 23, 2007 (Discovery Motion); September 17, 2007 (Suppression Motion). RE: MOTION to Suppress EVIDENCE <i>MEMORANDUM OF POINTS AND AUTHORITIES</i> <u>21</u> , MOTION for Discovery of COMPUTER EVIDENCE <u>19</u> . Filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order Continuing Hearing on Defendant's Discovery and Suppression Motions [Proposed])(Donahue, Patricia) (Entered: 07/03/2007)
07/05/2007	<u>24</u>	ORDER continuing hearing dates on defendant's discovery and suppression motions filed by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, re EX PARTE APPLICATION to Continue Discovery Hearing Dates and Suppression Motion from July 9, 2007 (Discovery Motion); July 30, 2007 (Suppression Motion) to July 23, 2007 (Discovery Motion); September 17, 2007 (Suppression Motion). RE: MOTION to Suppr EX PARTE APPLICATION to Continue Discovery Hearing Dates and Suppression Motion from July 9, 2007 (Discovery Motion); July 30, 2007 (Suppression Motion) to July 23, 2007 (Discovery Motion); September 17, 2007 (Suppression Motion). RE: MOTION to Suppr EX PARTE APPLICATION to Continue Discovery Hearing Dates and Suppression Motion from July 9, 2007 (Discovery Motion); July 30, 2007 (Suppression Motion) to July 23, 2007 (Discovery Motion); September 17, 2007 (Suppression Motion). RE: MOTION to Suppr <u>23</u> . (vc) (Entered: 07/10/2007)
07/11/2007	<u>25</u>	OPPOSITION to MOTION for Discovery of COMPUTER EVIDENCE <u>19</u> filed by Plaintiff USA as to Defendant Michael Joseph Pepe. (Donahue, Patricia) (Entered: 07/11/2007)
07/18/2007	<u>26</u>	REPLY TO GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION for Discovery of COMPUTER EVIDENCE <u>19</u> filed by Defendant Michael Pepe. (Attachments: # <u>1</u> Exhibit A, B)(Gunn, Carlton) (Entered: 07/18/2007)
07/18/2007	<u>27</u>	NOTICE OF MANUAL FILING filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 07/18/2007)
07/23/2007	<u>28</u>	MINUTES OF Motion Hearing held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, Re MOTION for Discovery of COMPUTER EVIDENCE <u>19</u> Defendant Michael Joseph Pepe is charged with four counts of engaging in illicit sexual conduct in foreign places in violation of 18 U.S.C. § 2423(c). The indictment alleges that, between September 2005 and June 2006, Defendant traveled to Cambodia and engaged in illicit sexual conduct with four minors. Presently before the Court is Defendant's Motion for Discovery of Computer Evidence. For the reasons set forth below, Defendant's Motion is granted in part and denied in part. Court Reporter: Not Present. (es) (Entered: 07/24/2007)
07/23/2007	<u>30</u>	MINUTES OF HEARING ON DEFENDNAT'S MOTION FOR DISCOVERY ON COMPUTER EVIDENCE (FILED 6/18/07) held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, re MOTION for Discovery of COMPUTER EVIDENCE <u>19</u> ; the court orders defendant's motion to suppress reset for 9/17/2007 at 10:00 AM and invites counsel to present their respective oral arguments regaring the above-referenced motion; the court requests counsel to advise the clerk if certain aspects of this motion have been resolved and advises counsel that a written order will issue Court Reporter: Pamela Seijas. (ab) (Entered: 07/26/2007)
07/24/2007	<u>31</u>	EX PARTE APPLICATION To File Summary of Forensic Computer Examination Problems in United States v. Chris Buesseman, In Camera and Under Seal Filed by Defendant Michael Joseph Pepe.(cbr) (Entered: 07/30/2007)
07/24/2007	<u>32</u>	ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe GRANTING EX PARTE APPLICATION To File Summary of Forensic Computer Examination Problems in United States v. Chris Buesseman, In Camera and Under Seal <u>31</u> . (cbr)

		(Entered: 07/30/2007)
08/01/2007	<u>33</u>	NOTICE OF MOTION AND MOTION to Suppress Evidence Discovered As Result of Computer Media Search Warrant Filed by Defendant Michael Joseph Pepe Motion set for hearing on 9/17/2007 at 10:00 AM before Judge Dale S. Fischer. (Attachments: # <u>1</u> Exhibit A-B)(Gunn, Carlton) (Entered: 08/01/2007)
08/03/2007	<u>34</u>	STIPULATION for Order Pursuant to 18 U.S.C. Section 3509d filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order Pursuant To 18 U.S.C. Section 3509d)(Donahue, Patricia) (Entered: 08/03/2007)
08/03/2007	<u>35</u>	ABSTRACT OF COURT PROCEEDINGS Returned Executed as to Michael Joseph Pepe Abstract received on MDC. complied with on 7/20/07. (es) Modified on 8/3/2007 (es,). (Entered: 08/03/2007)
08/03/2007	<u>36</u>	NOTICE OF CLERICAL ERROR, as to Defendant Michael Joseph Pepe: Due to clerical error Re: Abstract of Court Proceedings (CR-53) Returned Executed <u>35</u> WAS PROCESSED ON THE INCORRECT CASE NUMBER, THE CORRECT CASE NUMBER SHOULD READ: 2:07CR00618CAS. (es) (Entered: 08/03/2007)
08/03/2007	<u>37</u>	ORDER Pursuant to 18 USC 3509(d) by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, <u>34</u> (es) (Entered: 08/03/2007)
08/07/2007	<u>38</u>	TRANSCRIPT filed as to Michael Joseph Pepe for date of 7/23/07 before Judge Dale S. Fischer, re Motion Hearing <u>30</u> . Court Reporter: Pamela A Seijas. (lom) (sm). (Entered: 08/10/2007)
08/22/2007	<u>39</u>	OPPOSITION to MOTION to Suppress EVIDENCE <i>MEMORANDUM OF POINTS AND AUTHORITIES</i> <u>21</u> , MOTION to Suppress Evidence Discovered As Result of Computer Media Search Warrant <u>33</u> (Attachments: # <u>1</u> Declaration Gary J. Phillips# <u>2</u> Declaration Eddy Wang (Part 1)# <u>3</u> Declaration Eddy Wang (Part 2))(Donahue, Patricia) (Entered: 08/22/2007)
09/04/2007	<u>40</u>	REPLY to Government's Consolidated Opposition to Motions to Suppress Evidence MOTION to Suppress EVIDENCE <i>MEMORANDUM OF POINTS AND AUTHORITIES</i> <u>21</u> , MOTION to Suppress Evidence Discovered As Result of Computer Media Search Warrant <u>33</u> filed by Defendant Michael Pepe. (Gunn, Carlton) (Entered: 09/04/2007)
09/05/2007	<u>41</u>	STIPULATION to Continue Hearing on Defendant's Motion to Suppress Evidence and Motion to Suppress Evidence Discovered as Result of Computer Media Search Warrant from September 17, 2007 to October 29, 2007 filed by Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Gunn, Carlton) (Entered: 09/05/2007)
09/05/2007	<u>42</u>	ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, re Stipulation to Continue, <u>41</u> ; IT IS HEREBY ORDERED that the hearing on defendant's motin to suppress evidence and motion to suppress evidence discovered as a result of computer media search warrant shall be continued to 10/29/2007 at 10:00 AM before Judge Dale S. Fischer. (ab) (Entered: 09/06/2007)
10/04/2007	<u>43</u>	NOTICE OF MOTION AND MOTION to Dismiss Case Filed by Defendant Michael Joseph Pepe Motion set for hearing on 10/29/2007 at 10:00 AM before Judge Dale S. Fischer. (Brown, Charles) (Entered: 10/04/2007)
10/09/2007	<u>44</u>	NOTICE OF APPEARANCE OR REASSIGNMENT of AUSA John J Lulejian on behalf of Plaintiff USA. Filed by Plaintiff USA. (Lulejian, John) (Entered: 10/09/2007)
10/18/2007	<u>45</u>	NOTICE of Manual Filing of 1. Government's Ex Parte Application For Order Sealing Document; Declaration of John J. Lulejian; 2. [Proposed] Order Sealing Document; and 3. Under Seal Document filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Lulejian, John) (Entered: 10/18/2007)
10/18/2007	<u>46</u>	OPPOSITION to MOTION to Dismiss Case <u>43</u> filed by Plaintiff USA as to Defendant Michael Joseph Pepe. (Attachments: # <u>1</u> Exhibit A Part 1 To Lulejian Declaration# <u>2</u> Exhibit A Part 2 To Lulejian Declaration# <u>3</u> Exhibit B To Lulejian Declaration)(Lulejian, John) (Entered: 10/18/2007)

10/23/2007	<u>67</u>	SEALED DOCUMENT – GOVERNMENT'S EX PARTE APPLICATION FOR ORDER SEALING DOCUMENT. (cbr) (Entered: 12/20/2007)
10/23/2007	<u>68</u>	SEALED DOCUMENT – ORDER SEALING DOCUMENT <u>67</u> . (cbr) (Entered: 12/20/2007)
10/23/2007	<u>69</u>	SEALED DOCUMENT – DECLARATION OF EDDY WANG IN SUPPORT OF GOVERNMENT'S OPPOSITION TO MOTION TO DISMISS INDICTMENT <u>43</u> . (cbr) (Entered: 12/20/2007)
10/25/2007	<u>47</u>	STIPULATION to Continue Defendants Motion to Dismiss Indictment from October 29, 2007 to November 26, 2007 filed by Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Gunn, Carlton) (Entered: 10/25/2007)
10/25/2007	<u>48</u>	ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, Granting Stipulation to Continue the Hearing on Defefendant's Motion to Dismiss Indictment from 10/29/07 to 11/26/07 10:00 AM <u>47</u> (es) (Entered: 10/31/2007)
10/29/2007	<u>50</u>	MINUTES OF Motion (EVIDENTIARY) Hearing held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, re 21] The case is called and counsel state their appearances. Defense calls Agent Gary Phillips, who is swornand testifies as to evidence as reflected in the record. After the testimony is completed, the Court and counsel confer re availability of additional witnesses. Counsel are to contact the clerk for an agreed upon date to continue the hearing on defendants motions to suppress. See attached witness and exhibit list. Court Reporter: Pamela Seijas. (pj) (Entered: 11/05/2007)
10/29/2007	<u>51</u>	LIST OF EXHIBITS AND WITNESSES at trial as to Michael Joseph Pepe. (Attachments: # 1 Main Document # 2 Main Document) (ca) (Entered: 11/05/2007)
11/02/2007	<u>49</u>	REPLY to Government's Opposition to Defense MOTION to Dismiss Case <u>43</u> filed by Defendant Michael Pepe. (Brown, Charles) (Entered: 11/02/2007)
11/20/2007	<u>52</u>	STIPULATION to Continue Hearing Date on Defendant's Motion to Dismiss the Indictment from November 26, 2007, at 10:00 a.m. to December 3, 2007, at 10:00 a.m. filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order Continuing Hearing)(Donahue, Patricia) (Entered: 11/20/2007)
11/21/2007	<u>55</u>	ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, GRANTING Stipulation to Continue, <u>52</u> . Continuing MOTION to Suppress Evidence Discovered As Result of Computer Media Search Warrant <u>33</u> , and MOTION to Dismiss the Indictment <u>43</u> . Motion set for hearing on 12/3/2007 at 10:00 AM before Judge Dale S. Fischer. (ca) (Entered: 11/28/2007)
11/27/2007	<u>53</u>	DECLARATION of David Nguyen–Galante re MOTION to Suppress EVIDENCE <i>MEMORANDUM OF POINTS AND AUTHORITIES</i> <u>21</u> , MOTION to Suppress Evidence Discovered As Result of Computer Media Search Warrant <u>33</u> filed by Plaintiff USA as to Defendant Michael Joseph Pepe. (Donahue, Patricia) (Entered: 11/27/2007)
11/28/2007	<u>54</u>	NOTICE of Manual Filing of EX PARTE APPLICATION TO FILE IN CAMERA AND UNDER SEAL ; ORDER, IN CAMERA AND UNDER SEAL; EX PARTE APPLICATION IN CAMERA AND UNDER SEAL; ORDER IN CAMERA AND UNDER SEAL filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 11/28/2007)
11/30/2007	<u>56</u>	NOTICE of Manual Filing of Ex Parte Application to File Notice Under Seal; NOtice; Order Filed Under Seal; Proposed Order Filed Under Seal; Proposed Request Filed Under Seal filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 11/30/2007)
12/03/2007	<u>57</u>	MINUTES OF IN CHAMBERS ORDER by Judge Dale S. Fischer : DENYINTG Defendant's MOTION to Dismiss Indictment <u>43</u> . (ca) (Entered: 12/06/2007)
12/03/2007	<u>58</u>	MINUTES OF Motion Hearing held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, re MOTION to Dismiss Case <u>43</u> . Witnesses called. Exhibits identified and admitted. Written order on this motion wille issue Court Reporter: Pamela Seijas. (pj) (Entered: 12/07/2007)

12/04/2007	<u>99</u>	EXPARTE APPLICATION to File Motion for Depositions and Letters Regatory Under Seal; Declaration of Counsel. Filed by Defendant Michael Joseph Pepe. (jp) (Entered: 01/22/2008)
12/04/2007	<u>110</u>	SEALED DOCUMENT – ORDER <u>99</u> . (jp) (Entered: 01/27/2008)
12/05/2007	<u>60</u>	ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, re MOTION to Suppress Evidence Discovered As Result of Computer Media Search Warrant <u>33</u> . Defendant's Motion to Supress Evidence Discovered as Result of Computer Media Search Warrant is DENIED. Defendant's Motion to Suppress Evidence is DENIED in part. The parties should submit additional briefing addressing the issue raised by the Court by December 20, 2007. (rj) (Entered: 12/07/2007)
12/07/2007	<u>59</u>	NOTICE of Manual Filing of EX PARTE APPLICATION, FILED IN CAMERA AND UNDER SEAL; ORDER, FILED IN CAMERA AND UNDER SEAL filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 12/07/2007)
12/11/2007	<u>61</u>	NOTICE OF MOTION AND MOTION to Suppress STATEMENT; MEMORANDUM OF POINTS AND AUTHORITIES Filed by Defendant Michael Joseph PepeMotion set for hearing on 1/7/2008 at 10:00 AM before Judge Dale S. Fischer. (Attachments: # <u>1</u> Exhibit)(Gunn, Carlton) (Entered: 12/11/2007)
12/12/2007	<u>62</u>	NOTICE OF MOTION AND MOTION to Dismiss Case Filed by Defendant Michael Joseph PepeMotion set for hearing on 1/7/2008 at 10:00 AM before Judge Dale S. Fischer. (Brown, Charles) (Entered: 12/12/2007)
12/14/2007	<u>63</u>	NOTICE OF MOTION AND MOTION to Continue Trial from January 29, 2008 to March 25, 2008. Filed by Defendant Michael Joseph PepeMotion set for hearing on 1/7/2008 at 10:00 AM before Judge Dale S. Fischer. (Attachments: # <u>1</u> Exhibit)(Brown, Charles) (Entered: 12/14/2007)
12/14/2007	<u>64</u>	NOTICE of Manual Filing of EX PARTE APPLICATION TO FILE APPLICATION IN CAMERA AND UNDER SEAL; ORDER FILED IN CAMERA AND UNDER SEAL; APPLICATION FILED IN CAMERA AND UNDER SEAL; ORDER FILED IN CAMERA AND UNDER SEAL filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 12/14/2007)
12/14/2007	<u>66</u>	MINUTES OF IN CHAMBERS ORDER by Judge Dale S. Fischer : The Court has received a courtesy copy of Defendants motion to continue the trial. While it is unusual to comment on a motion even before an opposition is filed, the Court concludes it is in the best interest of the defense for it to do so before the January 7, 2008 hearing date. (tad) (Entered: 12/19/2007)
12/18/2007	<u>65</u>	NOTICE of Manual Filing of (1) EX PARTE APPLICATION TO FILE APPLICATION, FILED IN CAMERA & UNDER SEAL (2) ORDER, FILED IN CAMERA & UNDER SEAL (3) THIRD EX PARTE APPLICATION FILED IN CAMERA & UNDER SEAL; (4) ORDER, FILED IN CAMERA & UNDER SEAL filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 12/18/2007)
12/19/2007	<u>123</u>	ORDER GRANTING EXPARTE APPLICATION. ***FILED IN CAMERA AND UNDER SEAL***. (jp) (Entered: 02/01/2008)
12/20/2007	<u>70</u>	NOTICE of Manual Filing of ORDER, FILED IN CAMERA AND UNDER SEAL; EX PARTE APPLICATION FILED IN CAMERA AND UNDER SEAL filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 12/20/2007)
12/20/2007	<u>71</u>	SUPPLEMENT filed by Defendant Michael Joseph Pepe, re Order on Motion, <u>60</u> . (Attachments: # <u>1</u> Exhibit)(Gunn, Carlton) (Entered: 12/20/2007)
12/20/2007	<u>72</u>	OPPOSITION to MOTION to Suppress EVIDENCE <i>MEMORANDUM OF POINTS AND AUTHORITIES</i> <u>21</u> filed by Plaintiff USA as to Defendant Michael Joseph Pepe. (Donahue, Patricia) (Entered: 12/20/2007)
12/20/2007	<u>74</u>	MEMORANDUM filed by Plaintiff USA as to Defendant Michael Joseph Pepe. This criminal action, being filed on 12/20/07, was not pending in the U. S. Attorneys Office before the date on which Judge Stephen G. Larson began receiving criminal matters. (yca) (Entered: 12/27/2007)

12/20/2007	<u>75</u>	MEMORANDUM filed by Plaintiff USA as to Defendant Michael Joseph Pepe regarding the following Magistrate Judges: John C. Rayburn, Jr., Jacqueline Chooljian, Patrick J. Walsh, Jennifer T. Lum, Jeffrey W. Johnson.(yca) (Entered: 12/27/2007)
12/20/2007	<u>83</u>	FIRST SUPERSEDING INDICTMENT Filed as to Michael Joseph Pepe (1) count(s) 1s-7s. (ca) (Entered: 01/04/2008)
12/20/2007	<u>87</u>	CASE SUMMARY filed by AUSA John J. Lilelulejian as to Defendant Michael Joseph Pepe; defendants Year of Birth: 1953. (ca) (Entered: 01/09/2008)
12/21/2007	<u>73</u>	OBJECTIONS TO SUPPLEMENTAL DECLARATIONS IN SUPPORT OF OPPOSITION TO MOTION TO SUPPRESS EVIDENCE filed by Defendant Michael Joseph Pepe Re: Order on Motion, <u>60</u> (Gunn, Carlton) (Entered: 12/21/2007)
12/31/2007	<u>76</u>	OPPOSITION to MOTION to Continue Trial from January 29, 2008 to March 25, 2008. <u>63</u> filed by Plaintiff USA as to Defendant Michael Joseph Pepe. (Lulejian, John) (Entered: 12/31/2007)
12/31/2007	<u>77</u>	OPPOSITION to MOTION to Suppress STATEMENT; MEMORANDUM OF POINTS AND AUTHORITIES <u>61</u> filed by Plaintiff USA as to Defendant Michael Joseph Pepe. (Lulejian, John) (Entered: 12/31/2007)
12/31/2007	<u>78</u>	GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION FOR DEPOSITIONS AND LETTERS ROGATORY (64) filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Lulejian, John) (Entered: 12/31/2007)
12/31/2007	<u>79</u>	OPPOSITION to MOTION to Dismiss Case <u>62</u> filed by Plaintiff USA as to Defendant Michael Joseph Pepe. (Lulejian, John) (Entered: 12/31/2007)
01/02/2008	<u>80</u>	REPLY MOTION to Continue Trial from January 29, 2008 to March 25, 2008. <u>63</u> filed by Defendant MICHAEL JOSEPH PEPE. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C# <u>4</u> Exhibit D# <u>5</u> Exhibit E# <u>6</u> Exhibit F# <u>7</u> Exhibit G# <u>8</u> Exhibit H# <u>9</u> Exhibit I)(Gunn, Carlton) (Entered: 01/02/2008)
01/03/2008	<u>81</u>	REPLY MOTION to Suppress STATEMENT; MEMORANDUM OF POINTS AND AUTHORITIES <u>61</u> filed by Defendant MICHAEL PEPE. (Gunn, Carlton) (Entered: 01/03/2008)
01/03/2008	<u>82</u>	REPLY TO GOVERNMENTS OPPOSITION TO DEFENDANTS MOTION FOR DEPOSITIONS AND LETTERS ROGATORY filed by Defendant Michael Joseph Pepe Re: Notice of Manual Filing (G-92) <u>54</u> (Gunn, Carlton) (Entered: 01/03/2008)
01/04/2008	<u>84</u>	EX PARTE APPLICATION for Order for Authorizing The Examination of Defendant's Body Filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Lulejian, John) (Entered: 01/04/2008)
01/04/2008	<u>85</u>	NOTICE of Manual Filing of Ex Parte Application For An Order Sealing Document; [Proposed] Order; Under Seal Document filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Lulejian, John) (Entered: 01/04/2008)
01/04/2008	<u>86</u>	filed by Defendant Michael Joseph Pepe <i>Reply to Government's Opposition to Dismiss for Lack of Compulsory Process</i> Re: Opposition to Motion (CR) <u>79</u> (Brown, Charles) (Entered: 01/04/2008)
01/04/2008	<u>91</u>	MINUTES OF In Camera Hearing held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. The Court discusses with counsel the reasons for today's proceeding as stated on the sealed record. Court Reporter: Mark Schweitzer. (ca) (Entered: 01/10/2008)
01/07/2008	<u>92</u>	MINUTES (IN CHAMBERS) ORDER DENYING Motion to Dismiss Based on Lack of Compulsory Process by Judge Dale S. Fischer. (ca) (Entered: 01/10/2008)
01/07/2008	<u>93</u>	MINUTES (IN CHAMBERS) ORDER by Judge Dale S. Fischer : GRANTING in part and DENYING in part Defendant's MOTION to Suppress STATEMENT <u>61</u> . Evidence that defendant lifted his shorts in response to a question regarding distinguishing marks is suppressed. Defendant's Motion is otherwise DENIED. (ca) (Entered: 01/10/2008)

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01/07/2008	<u>96</u>	MINUTES of Arraignment on the First Superseding Indictment, Hearing on Defendant's Motion for Depositions and Letters Rogatory, Motion to Dismiss, Motion to Suppress, and Pretrial Conference held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. Defendant arraigned and enters plea of Not Guilty to all counts as charged in the First Superseding Indictment. Jury Trial set for 4/8/2008 8:00 AM before Judge Dale S. Fischer. Status Conference set for 3/10/2008 10:00 AM before Judge Dale S. Fischer. Court Reporter: Pamela Seijas. (csi) (Entered: 01/11/2008)
01/08/2008	<u>94</u>	MINUTES (IN CHAMBERS) ORDER by Judge Dale S. Fischer : GRANTING MOTION to Continue Trial <u>63</u> . Jury Trial set for 4/8/2008 at 8:00 AM; Status Conference set for 3/10/2008 at 10:00 AM before Judge Dale S. Fischer. (ca) (Entered: 01/10/2008)
01/08/2008	<u>95</u>	MINUTES (IN CHAMBERS) ORDER DENYING Defendant's Motion for Depositions and Letters Rogatory by Judge Dale S. Fischer. (ca) (Entered: 01/10/2008)
01/08/2008	<u>103</u>	SEALED DOCUMENT – GOVERNMENT'S EX PARTE APPLICATION FOR AN ORDER SEALING DECLARATION OF EDDY WANG IN SUPPORT OF GOVERNMENT'S APPLICATION FOR AN ORDER AUTHORIZING THE EXAMINATION OF DEFENDANT'S BODY (cbr) (Entered: 01/22/2008)
01/08/2008	<u>104</u>	ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe GRANTING EXPARTE APPLICATION TO SEAL <u>103</u> . (cbr) (Entered: 01/22/2008)
01/08/2008	<u>105</u>	SEALED DOCUMENT – DECLARATION OF EDDY WANG IN SUPPORT OF GOVERNMENT'S EX PARTE APPLICATION FOR AN ORDER AUTHORIZING THE EXAMINATION OF DEFENDANT'S BODY <u>84</u> . (cbr) (Entered: 01/22/2008)
01/10/2008	<u>88</u>	OPPOSITION TO GOVERNMENTS EX PARTE APPLICATION FOR AN ORDER AUTHORIZING THE EXAMINATION OF DEFENDANTS BODY filed by Defendant Michael Joseph Pepe Re: EX PARTE APPLICATION for Order for Authorizing The Examination of Defendant's Body <u>84</u> (Attachments: # <u>1</u> Photographs)(Gunn, Carlton) (Entered: 01/10/2008)
01/10/2008	<u>89</u>	NOTICE of Manual Filing of EX PARTE APPLICATION, FILED IN CAMERA AND UNDER SEAL; ORDER, FILED IN CAMERA AND UNDER SEAL; AND MEMORANDUM OF POINTS AND AUTHORITIES, FILED IN CAMERA AND UNDER SEAL filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 01/10/2008)
01/10/2008	<u>90</u>	ORDER RE CROSS–EXAMINATION OF DECLARANTS SUPPORTING THE GOVERNMENT'S SUPPLEMENTAL BRIEFING RE SUPPRESSION OF EVIDENCE OBTAINED IN THE SINGAPORE SEARCH by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe re: Supplement (non–motion) <u>71</u> . (se) (Entered: 01/10/2008)
01/11/2008	<u>97</u>	MINUTES OF IN CHAMBERS ORDER by Judge Dale S. Fischer ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe GRANTING EX PARTE APPLICATION for Order for Authorizing The Examination of Defendant's Body <u>84</u> . (se) (Entered: 01/11/2008)
01/14/2008	<u>98</u>	NOTICE OF MOTION AND MOTION for Inspection of AND EXAMINATION OF COMPUTER EVIDENCE. Filed by Defendant Michael Joseph Pepe Motion set for hearing on 2/4/2008 at 10:00 AM before Judge Dale S. Fischer. (Attachments: # <u>1</u> Exhibit A, Pt. 1# <u>2</u> Exhibit A, Pt. 2# <u>3</u> Exhibit A, Pt. 3# <u>4</u> Exhibit B)(Gunn, Carlton) (Entered: 01/14/2008)
01/25/2008	<u>106</u>	NOTICE OF MOTION AND MOTION for Inspection of Foreign Witness (Deposition). Filed by Plaintiff USA as to Defendant Michael Joseph Pepe Motion set for hearing on 2/6/2008 at 10:00 AM before Judge Dale S. Fischer. (Donahue, Patricia) (Entered: 01/25/2008)
01/27/2008	<u>114</u>	SEALED DOCUMENT – NOTICE OF MOTION for Deposition and Letters Regatory; Hearing Date: January 7, 2008; Hearing Time: 10:00 a.m. (jp) (Entered: 01/27/2008)
01/31/2008	<u>120</u>	NOTICE OF WITHDRAWAL of Motion filed by Defendant Michael Joseph Pepe RE: MOTION for Inspection of AND EXAMINATION OF COMPUTER

		EVIDENCE. <u>98</u> (Attachments: # <u>1</u> Agreement)(Gunn, Carlton) (Entered: 01/31/2008)
02/05/2008	<u>127</u>	DECLARATION of KOEUT RITH filed by Plaintiff USA as to Defendant Michael Joseph Pepe RE: MOTION to Suppress EVIDENCE <i>MEMORANDUM OF POINTS AND AUTHORITIES</i> <u>21</u> <i>SUPPLEMENTAL</i> (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B)(Donahue, Patricia) (Entered: 02/05/2008)
02/05/2008	<u>128</u>	OPPOSITION to MOTION for Inspection of Foreign Witness (Deposition). <u>106</u> filed by Defendant Michael Joseph Pepe. (Brown, Charles) (Entered: 02/05/2008)
02/06/2008	<u>130</u>	MINUTES (IN CHAMBERS) ORDER by Judge Dale S. Fischer: Order GRANTING the Government's Motion to Take Foreign Deposition. (mg) (Entered: 02/11/2008)
02/07/2008	<u>129</u>	MINUTES (In Chambers)by Judge Dale S. Fischer: On 6/26/06, Defendant filed a Motion to Suppress Evidence, seeking, among other things, the exclusion of evidence obtained in a forensic examination conducted by US officials in Singapore. The Court requested further briefing. The parties submitted their supplemental briefs on 12/20/07. Having considered these submissions, and heard testimony, the Court DENIES Defendant's Motion. IT IS SO ORDERED.(See minute order for further details) (yl) (Entered: 02/07/2008)
02/15/2008	<u>131</u>	STIPULATION for Order To Take Depositions Of Foreign Witnesses Pursuant To Federal Rule Of Criminal Procedure 15 filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Lulejian, John) (Entered: 02/15/2008)
02/15/2008	<u>132</u>	ORDER by Judge Dale S. Fischer GRANTING Request to depose Ly Srey Vyna and the mothers of L.K., S.S., and S.R. on February 26, 27, 28, 2008, and if necessary to accommodate Defendant's attorneys, March 1, 2008. The Court further GRANTS the government's motion to depose San Thi Chhoeurn on 2/29/08. (mg) (Entered: 02/15/2008)
02/26/2008	<u>133</u>	TRANSCRIPT filed as to Michael Joseph Pepe for dates of 10/29/07 before Judge Dale S. Fischer, re Motion Hearing, <u>50</u> . Court Reporter: Pamela A. Seijas. (mo) (sm). (Entered: 02/28/2008)
02/26/2008	<u>134</u>	TRANSCRIPT filed as to Michael Joseph Pepe for dates of 12/3/07 before Judge Dale S. Fischer, re Motion Hearing, <u>58</u> . Court Reporter: Pamela A. Seijas. (mo) (sm). (Entered: 02/28/2008)
02/26/2008	<u>135</u>	SEALED DOCUMENT – REPORTER'S TRANSCRIPT for date of 12/3/07. (Proceedings sealed from page 41 line 4 to page 41 line 19) (mo) (Entered: 02/28/2008)
02/26/2008	<u>136</u>	TRANSCRIPT filed as to Michael Joseph Pepe for dates of 2/6/08 before Judge Dale S. Fischer, Court Reporter: Pamela A. Seijas. (mo) (sm). (Entered: 02/28/2008)
02/26/2008	<u>137</u>	SEALED DOCUMENT – REPORTER'S TRANSCRIPT for date of 2/6/08. (Sealed Transcript page 80 line 17 to page 82 line 13) (mo) (Entered: 02/28/2008)
03/06/2008	<u>138</u>	EXHIBIT filed by Defendant Michael Joseph Pepe in support of Re: Discovery Status for Consideration at Pretrial Conference. (Attachments: # <u>1</u> Exhibits)(Gunn, Carlton) (Entered: 03/06/2008)
03/07/2008	<u>139</u>	NOTICE OF MOTION AND MOTION to Suppress EVIDENCE FOUND IN ADDITIONAL WARRANTLESS COMPUTER SEARCHES CONDUCTED IN UNITED STATES; MEMORANDUM OF POINTS AND AUTHORITIES Filed by Defendant Michael Joseph Pepe Motion set for hearing on 3/31/2008 at 10:00 AM before Judge Dale S. Fischer. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B)(Gunn, Carlton) (Entered: 03/07/2008)
03/10/2008	<u>141</u>	MINUTES OF Status Conference held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. The Court and counsel address numerous pretrial issues, as stated on the record. Court Reporter: Pamela Seijas. (mg) (Entered: 03/14/2008)
03/13/2008	<u>140</u>	STIPULATION to Continue Trial Date And Excludable Time Periods Under Speedy Trial Act from April 8, 2008 to May 6, 2008 filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Donahue, Patricia) (Entered: 03/13/2008)

03/14/2008	<u>142</u>	ORDER by Judge Dale S. Fischer Regarding Continuance of Trial Date and Excludable Time Periods Under Speedy Trial Act as to Defendant Michael Joseph Pepe. Jury Trial continued to 5/6/2008 at 08:00 AM before Judge Dale S. Fischer. The Court will conduct a Status Conference on 4/14/2008 at 10:00 AM before Judge Dale S. Fischer. Re Stipulation to Continue <u>140</u> . (mg) (Entered: 03/18/2008)
03/21/2008	<u>143</u>	OPPOSITION to MOTION to Suppress EVIDENCE FOUND IN ADDITIONAL WARRANTLESS COMPUTER SEARCHES CONDUCTED IN UNITED STATES; MEMORANDUM OF POINTS AND AUTHORITIES <u>139</u> filed by Plaintiff USA as to Defendant Michael J. Pepe. (Donahue, Patricia) (Entered: 03/21/2008)
03/25/2008	<u>144</u>	REPLY TO GOVERNMENT'S OPPOSITION TO MOTION to Suppress EVIDENCE FOUND IN ADDITIONAL WARRANTLESS COMPUTER SEARCHES CONDUCTED IN UNITED STATES; MEMORANDUM OF POINTS AND AUTHORITIES <u>139</u> filed by Defendant MICHAEL J. PEPE. (Gunn, Carlton) (Entered: 03/25/2008)
03/28/2008	<u>145</u>	NOTICE OF MOTION AND APPLICATION to Shorten Time for Hearing Filed by Defendant Michael Joseph Pepe Motion set for hearing on 4/14/2008 at 10:00 AM before Judge Dale S. Fischer. (Attachments: # <u>1</u> Proposed Order # <u>2</u> Motion For Discovery# <u>3</u> Exhibit)(Gunn, Carlton) (Entered: 03/28/2008)
03/31/2008	<u>146</u>	MINUTES (IN CHAMBERS) by Judge Dale S. Fischer: Proceedings: Order DENYING Defendant's MOTION to Suppress Evidence Found in Additional Warrantless Computer Searches Conducted in United States <u>139</u> . (mg) (Entered: 04/01/2008)
03/31/2008	<u>148</u>	MINUTES OF Motion Hearing held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, re MOTION to Suppress EVIDENCE FOUND IN ADDITIONAL WARRANTLESS COMPUTER SEARCHES CONDUCTED IN UNITED STATES <u>139</u> : The case is called and counsel state their appearances. The Court addresses the above-referenced motion and defense counsels ex parte application to file a discovery motion, invites oral argument after advising the parties of its tentative ruling, and indicates a written order will issue. The Court orders parties to return on 4/14/08 at 10:00 a.m. Court Reporter: Pamela Seijas. (yl) (Entered: 04/02/2008)
04/01/2008	<u>147</u>	NOTICE OF MOTION AND MOTION in Limine to Introduce Evidence Under Federal Rule of Evidence 404(b); Memorandum of Points and Authorities Filed by Plaintiff USA as to Defendant Michael Joseph Pepe Motion set for hearing on 4/21/2008 at 10:00 AM before Judge Dale S. Fischer.(Donahue, Patricia) (Entered: 04/01/2008)
04/03/2008	<u>149</u>	NOTICE OF MOTION AND MOTION in Limine to Introduce Evidence Under Federal Rule of Evidence 404(b); Memorandum of Points and Authorities Filed by Plaintiff USA as to Defendant Michael Joseph Pepe Motion set for hearing on 4/28/2008 at 10:00 AM before Judge Dale S. Fischer.(Donahue, Patricia) (Entered: 04/03/2008)
04/08/2008	<u>151</u>	STIPULATION to Continue GOVERNMENT'S MOTION from APRIL 21, 2008, 10:00 A.M. to APRIL 28, 2008, 10:00 A.M. Re: MOTION in Limine to Introduce Evidence Under Federal Rule of Evidence 404(b); Memorandum of Points and Authorities MOTION in Limine to Introduce Evidence Under Federal Rule of Evidence 404(b); Memorandum of Points and Authorities <u>149</u> filed by Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Gunn, Carlton) (Entered: 04/08/2008)
04/08/2008	<u>152</u>	NOTICE of Errata filed by Defendant Michael Joseph Pepe RE: Stipulation to Continue, <u>151</u> . (Attachments: # <u>1</u> Proposed Order)(Gunn, Carlton) (Entered: 04/08/2008)
04/08/2008	<u>153</u>	STIPULATION for Order For Extension of Time to April 22, 2008 for Steven C. Bailey, Esq., to Produce Documents or File Motion Pursuant to Subpoena filed by Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Gunn, Carlton) (Entered: 04/08/2008)
04/09/2008	<u>154</u>	ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, re Stipulation to Continue <u>151</u> : GOOD CAUSE HAVING BEEN SHOWN, IT IS HEREBY

		ORDERED that the hearing on the governments Motion for Introduction of Evidence under Federal Rule of Evidence 404(b) shall be continued from April 21, 2008, at 10:00 a.m., to April 28, 2008, at 10:00 a.m. (bm) (Entered: 04/09/2008)
04/09/2008	<u>155</u>	OPPOSITION to MOTION in Limine to Introduce Evidence Under Federal Rule of Evidence 404(b); Memorandum of Points and Authorities MOTION in Limine to Introduce Evidence Under Federal Rule of Evidence 404(b); Memorandum of Points and Authorities <u>147</u> filed by Defendant Michael Pepe. (Gunn, Carlton) (Entered: 04/09/2008)
04/09/2008	<u>156</u>	GOVERNMENT'S RESPONSE TO DEFENDANT'S DISCOVERY MOTION re APPLICATION to Shorten Time for Hearing <u>145</u> filed by Plaintiff USA as to Defendant Michael Joseph Pepe. (Donahue, Patricia) (Entered: 04/09/2008)
04/11/2008	<u>157</u>	NOTICE of Manual Filing of Ex Parte, Motion and Order filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 04/11/2008)
04/11/2008	<u>158</u>	NOTICE of Manual Filing of Ex Parte Application to File Motion in Limine Under Seal; Order; Motion in Limine, Under Seal. filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 04/11/2008)
04/14/2008	<u>161</u>	MINUTES OF Pretrial Conference held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. The case is called and counsel state their appearances. The Court addresses with counsel various pretrial issues as stated on the record. Counsel are ordered to submit their respective proposed voir dire, jury instructions, and verdict form as soon as possible. Defense counsel requests the Courts assistance with their clients custodial arrangements. The Court orders counsel to return on 4/28/2008 at 03:00 PM for hearing on motions in limine. Court Reporter: Pamela Seijas. (sch) (Entered: 04/16/2008)
04/14/2008	<u>165</u>	EXPARTE APPLICATION to file Motion in Limine under seal, filed by Defendant Michael Joseph Pepe(mat) (Entered: 04/18/2008)
04/14/2008	<u>166</u>	ORDER by Judge Dale S. Fischer granting EXPARTE APPLICATION to file document under seal, <u>165</u> . (mat) (Entered: 04/18/2008)
04/14/2008	<u>167</u>	SEALED DOCUMENT-MOTION IN LIMINE TO EXCLUDE "MOLE IDENTIFICATION" TESTIMONY AND REQEUST FOR DAUBERT HEARING; MEMORANDUM OF POINTS AND AUTHORITIES.(mat) Modified on 4/18/2008 (mat,). (Entered: 04/18/2008)
04/14/2008	<u>168</u>	EXPARTE APPLICATION TO FILE MOTION IN LIMINE UNDER SEAL, filed by Defendant Michael Joseph Pepe(mat) (Entered: 04/18/2008)
04/14/2008	<u>169</u>	ORDER by Judge Dale S. Fischer GRANTING EXPARTE APPLICATION TO SEAL TO FILE MOTION IN LIMINE UNDER SEAL <u>168</u> . (mat) (Entered: 04/18/2008)
04/14/2008	<u>170</u>	SEALED DOCUMENT- MOTION IN LIMINE TO EXCLUDE EVIDENCE.(mat) (Entered: 04/18/2008)
04/15/2008	<u>159</u>	filed by Defendant Michael Joseph Pepe <i>Proposed Order Re Housing of Defendant at MDC</i> (Brown, Charles) (Entered: 04/15/2008)
04/15/2008	<u>160</u>	DECLARATION of DR. RICHARD GARY BENNETT filed by Defendant Michael Joseph Pepe RE: Notice of Manual Filing (G-92) <u>158</u> (Attachments: # <u>1</u> Exhibit A-Bennett CV)(Gunn, Carlton) (Entered: 04/15/2008)
04/17/2008	<u>162</u>	NOTICE OF MOTION AND MOTION in Limine to Exclude Testimony of Govt Cultural Expert Wendy Freed and to Preclude Characterizing the Allegations in this Case as Torture Filed by Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Exhibit)(Brown, Charles) (Entered: 04/17/2008)
04/18/2008	<u>163</u>	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents. The following error(s) was found: Proposed Order shall be included as an attachment to the main electronically filed document pursuant to General Order 08-02 RE: Miscellaneous Document <u>159</u> . In response to this notice the court may order (1) an amended or correct document to be filed (2) the document stricken or (3) take other action as the court deems appropriate. (sch) (Entered: 04/18/2008)

04/18/2008	<u>164</u>	MINUTES OF IN CHAMBERS ORDER by Judge Dale S. Fischer re Housing of Michael Pepe <u>159</u> . Counsel has proposed that the Court order special housing conditions for Defendant due to the nature of the charges against him, and to protect the confidential and privileged materials provided by his counsel. The Court DENIES the request without prejudice. (sch) (Entered: 04/18/2008)
04/21/2008	<u>171</u>	NOTICE OF MOTION AND MOTION in Limine to Exclude Testimony of Govt Grooming Expert SA James T. Clemente Filed by Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Exhibit)(Brown, Charles) (Entered: 04/21/2008)
04/21/2008	<u>172</u>	REPLY in support MOTION in Limine to Introduce Evidence Under Federal Rule of Evidence 404(b); Memorandum of Points and Authorities MOTION in Limine to Introduce Evidence Under Federal Rule of Evidence 404(b); Memorandum of Points and Authorities <u>149</u> filed by Plaintiff USA as to Defendant Michael Joseph Pepe. (Donahue, Patricia) (Entered: 04/21/2008)
04/22/2008	<u>173</u>	NOTICE of Manual Filing of (1) Ex Parte Application to File Deposition Objections Under Seal; (2) Order; (3) Memorandum of Points and Authorities re Objections Made During Deposition Testimony (Filed Under Seal); and (4) Memorandum of Points and Authorities re Objections Made During Deposition Testimony (Filed Under Seal) filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 04/22/2008)
04/22/2008	<u>177</u>	EXPARTE APPLICATION TO FILE DEPOSTION OBJECTIONS UNDER SEAL.(mat) (Entered: 04/28/2008)
04/23/2008	<u>174</u>	NOTICE OF MOTION AND MOTION in Limine to Permit Adult Attendant For Child Victim Witnesses Filed by Plaintiff USA as to Defendant Michael Joseph Pepe Motion set for hearing on 5/7/2008 at 08:00 AM before Judge Dale S. Fischer. (Attachments: # <u>1</u> Proposed Order Re Adult Attendant For Child Victim Witnesses)(Donahue, Patricia) (Entered: 04/23/2008)
04/24/2008	<u>175</u>	NOTICE of Manual Filing of Ex Parte Application To File Under Seal; Proposed Order Sealing Document; Government's Opposition To Defendant's Motion To Exclude Evidence filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Donahue, Patricia) (Entered: 04/24/2008)
04/24/2008	<u>178</u>	SEAL DOCUMENT--ORDER FILED UNDER SEAL (mat) Additional attachment(s) added on 4/28/2008 (mat,). Modified on 4/28/2008 (mat,). (Entered: 04/28/2008)
04/24/2008	<u>190</u>	SEALED DOCUMENT - MEMORANDUM OF POINTS AND AUTHORITIES RE OBJECTIONS MADE DURING DEPOSITION TESTIMONY OF LY KIM ENG (sm) (Entered: 04/30/2008)
04/24/2008	<u>191</u>	MEMORANDUM OF POINTS AND AUTHORITIES RE OBJECTIONS MADE DURING DEPOSITION TESTIMONY OF CHEONG THI SANG (sm) (Entered: 04/30/2008)
04/28/2008	<u>176</u>	NOTICE of Manual Filing of Ex Parte Application to file Under Seal, [Proposed] Order, Memorandum of Points and Authorities to be filed UNDER SEAL filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 04/28/2008)
04/28/2008	<u>179</u>	OPPOSITION to MOTION in Limine to Exclude Testimony of Govt Cultural Expert Wendy Freed and to Preclude Characterizing the Allegations in this Case as Torture <u>162</u> , MOTION in Limine to Exclude Testimony of Govt Grooming Expert SA James T. Clemente <u>171</u> filed by Plaintiff USA as to Defendant Michael Joseph Pepe. (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit A Tab 1# <u>3</u> Exhibit A Tab 2# <u>4</u> Exhibit A Tab 3# <u>5</u> Exhibit A TAB 3 PART 2# <u>6</u> Exhibit A Tab 4# <u>7</u> Exhibit A Tab 5# <u>8</u> Exhibit B# <u>9</u> Exhibit B Part 2# <u>10</u> Exhibit B Part 3)(Donahue, Patricia) (Entered: 04/28/2008)
04/28/2008	<u>180</u>	TRIAL MEMORANDUM filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Exhibit A)(Lulejian, John) (Entered: 04/28/2008)
04/28/2008	<u>181</u>	NOTICE of Manual Filing of Ex Parte Application and [Proposed] Order to be filed In Camera and Under Seal filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 04/28/2008)
04/29/2008	<u>182</u>	NOTICE of Manual Filing of Ex Parte Application and Order In Camera and Under Seal filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 04/29/2008)

04/29/2008	<u>183</u>	NOTICE of Manual Filing of Government's Ex Parte Application To File Under Seal; (Proposed) Order Sealing Document; Government's Opposition To Defendant's Motion In Limine To Exclude "Mole Identification" Testimony And Request For Daubert Hearing filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Lulejian, John) (Entered: 04/29/2008)
04/29/2008	<u>184</u>	PROPOSED VOIR DIRE QUESTIONS filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Donahue, Patricia) (Entered: 04/29/2008)
04/29/2008	<u>185</u>	NOTICE OF MOTION AND MOTION in Limine to Preclude ANY TESTIMONY, EVIDENCE, REFERENCES, OR ARGUMENTS ABOUT DEFENDANT'S ALLEGED MENTAL CONDITIONS Filed by Plaintiff USA as to Defendant Michael Joseph Pepe Motion set for hearing on 5/5/2008 at 08:00 AM before Judge Dale S. Fischer. (Attachments: # <u>1</u> Proposed Order)(Lulejian, John) (Entered: 04/29/2008)
04/29/2008	<u>203</u>	SEALED DOCUMENT – GOVERNMENT'S EX PARTE APPLICATION TO FILE GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE MOLE IDENTIFICATION TESTIMONY AND REQUES FOR DAUBERT HEARING UNDER SEAL. (cbr) (Entered: 05/02/2008)
04/29/2008	<u>231</u>	MINUTES OF Motion Hearing held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, HEARING ON: 1) Governments Motion in limine to Introduce Evidence Under Rule 404(b) [filed 4/1/08]; 2) Governments Re–filed Motion in limine to Introduce Evidence Under Rule 404(b) [filed 4/3/08]; 3) Defendants Under Seal Motion in limine [filed 4/14/08]; 4) Defendants Motion in Limine to Exclude Testimony of Govt Cultural Expert Wendy Freed and to Preclude Characterizing the Allegations in this Case as Torture [filed 4/17/08]; 5) Defendants Motion in Limine to Exclude Testimony of Government Grooming Expert of Special Agent James T. Clemente [filed 4/21/08]; and 6) Defendants In Camera/Ex Parte Applications: The case is called and counsel state their appearances. The Court and counsel address the above–referenced motions and further discuss the trial that is now scheduled to begin on 5/7/08 at 10:00 a.m., as stated on the record. The Court sets a Daubert hearing on 5/5/08 at 10:00 a.m. and advises counsel that written orders will issue. Court Reporter: Pamela Seijas. (bm) (Entered: 05/08/2008)
04/30/2008	<u>186</u>	ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, GRANTING GOVERNMENT'S MOTION IN LIMINE TO PRECLUDE ANY TESTIMONY, EVIDENCE, REFERENCES, OR ARGUMENTS ABOUT DEFENDANT'S ALLEGED MENTAL CONDITIONS <u>185</u> . Good cause having been shown and the defendant having stated that he does not intend to assert such a defense, IT IS HEREBY ORDERED that the Government's Motion in Limine to Preclude Any Testimony, Evidence, References, or Arguments about Defendant's Alleged Mental Conditions is GRANTED. Accordingly, Defendant is PRECLUDED from introducing any testimony, evidence, references, or arguments about any real or perceived mental condition. (sch) (Entered: 04/30/2008)
04/30/2008	<u>188</u>	NOTICE of Manual Filing of 1. Ex Parte Application; 2. Order Filed Under Seal; 3. Response to Government's Motion in Limine filed Under Seal filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 04/30/2008)
04/30/2008	<u>189</u>	NOTICE of Manual Filing of Ex Parte Application to file Under Seal, [Proposed] Order, Reply to Government's Opposition to Motion in Limine to Exclude Evidence filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 04/30/2008)
04/30/2008	<u>193</u>	MINUTES OF (IN CHAMBERS) ORDER by Judge Dale S. Fischer GRANTING IN PART AND RESERVING CONSIDERATION OF ASPECTS OF THE Government's MOTION for Introduction of Evidence Under Federal Rule of Evidence 404(b) <u>147</u> . The Court GRANTS the Governments Motion for Introduction of Evidence Under Federal Rule of Evidence 404(b) with regard to the first group of proposed photographs. The Court defers consideration of the second and third groups. (sch) (Entered: 05/01/2008)
04/30/2008	<u>194</u>	ORDER RE ADULT ATTENDANT FOR CHILD VICTIM WITNESSES <u>174</u> by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. (See Order for Further Details). (sch) (Entered: 05/01/2008)

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04/30/2008	<u>201</u>	MINUTES OF IN CHAMBERS (TENTATIVE) ORDER by Judge Dale S. Fischer GRANTING IN PART AND DENYING IN PART Defendant's MOTION in Limine to Exclude the Testimony of Government Cultural Expert Wendy Freed, M.D. and to Preclude Characterizing the Allegations in this Case as "Torture" <u>162</u> , and GRANTING IN PART AND DENYING IN PART Defendant's MOTION in Limine to Exclude the Testimony of Government "Grooming" Expert Special Agent James T. Clemente <u>171</u> . (See Order for Further Details). (sch) (Entered: 05/02/2008)
04/30/2008	<u>205</u>	ORDER GRANTING EX PARTE APPLICATION TO SEAL TO FILE GOVERNMENT' OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE MOLE IDENTIFICATION TESTIMONY AND REQUES FOR DAUBERT HEARING UNDER SEAL <u>203</u> by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. (cbr) (Entered: 05/02/2008)
04/30/2008	<u>206</u>	SEALED DOCUMENT – MINUTES OF IN CHAMBERS ORDER TENTATIVE ORDER DENYING DEFENDANT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF ERECTILE DYSFUNCTION MEDICATION. (cbr) (Entered: 05/02/2008)
04/30/2008	<u>207</u>	EX PARTE APPLICATION TO SEAL To File Koeung Lang Deposition Objections Unde Seal. Filed by Defendant Michael Joseph Pepe(cbr) (Entered: 05/02/2008)
04/30/2008	<u>208</u>	ORDER GRANTING EX PARTE APPLICATION To File Koeung Lang Deposition Objections Unde Seal <u>207</u> by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. (cbr) (Entered: 05/02/2008)
04/30/2008	<u>209</u>	SEALED DOCUMENT – MEMORANDUM OF POINTS AND AUTHORITIES RE: OBJECTIONS MADE DURING DEPOSITION TESTIMONEY OF KOEUNG LANG. (cbr) (Entered: 05/02/2008)
04/30/2008	<u>216</u>	SEALED DOCUMENT – GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE MOLE IDENTIFICATION TESTIMONY AND REQUEST FOR DAUBERT HEARING. (cbr) (Entered: 05/02/2008)
04/30/2008	<u>219</u>	SEALED DOCUMENT – EX PARTE APPLICATION To File Under the Government's Opposition to Defendant's Motion to Exclude Evidence.(cbr) (Entered: 05/05/2008)
04/30/2008	<u>220</u>	SEALED DOCUMENT – ORDER FILING UNDER SEAL THE GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION TO EXCLUDE EVIDENCE. (cbr) (Entered: 05/05/2008)
04/30/2008	<u>221</u>	SEALED DOCUMENT – GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION TO EXCLUDE EVIDENCE. (cbr) (Entered: 05/05/2008)
05/01/2008	<u>192</u>	PROPOSED VOIR DIRE QUESTIONS filed by Defendant Michael Joseph Pepe (Brown, Charles) (Entered: 05/01/2008)
05/01/2008	<u>195</u>	NOTICE of Manual Filing of Government's Ex Parte Application To File IN CAMERA AND UNDER SEAL; (Proposed) Order Sealing Document; Government's Witness Statements Filed IN CAMERA AND UNDER SEAL filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Lulejian, John) (Entered: 05/01/2008)
05/01/2008	<u>196</u>	REPLY To Opposition To MOTION in Limine to Exclude <u>167</u> filed by Defendant Michael Pepe. (Gunn, Carlton) (Entered: 05/01/2008)
05/01/2008	<u>210</u>	EX PARTE APPLICATION TO SEAL To File Motion Reply in Limine Under Seal. Filed by Defendant Michael Joseph Pepe(cbr) (Entered: 05/02/2008)
05/01/2008	<u>211</u>	ORDER GRANTING EXPARTE APPLICATION To File Motion Reply in Limine Under Seal <u>210</u> by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. (cbr) (Entered: 05/02/2008)
05/01/2008	<u>212</u>	SEALED DOCUMENT – REPLY TO GOVERNMENT'S OPPOSITION IN LIMINE TO EXCLUDE EVIDENCE OF ERECTILE DYSFUNCTION MEDICATION. (cbr) (Entered: 05/02/2008)
05/01/2008	<u>213</u>	EX PARTE APPLICATION To File Response to Motion In Limine With Attached Medical Records Under Seal. Filed by Defendant Michael Joseph Pepe(cbr) (Entered: 05/02/2008)

		05/02/2008)
05/01/2008	<u>214</u>	SEALED DOCUMENT – ORDER. (cbr) (Entered: 05/02/2008)
05/01/2008	<u>215</u>	SEALED DOCUMENT – RESPONSE TO GOVERNMENT'S MOTION IN LIMINE. (cbr) (Entered: 05/02/2008)
05/02/2008	<u>202</u>	STIPULATION for Order Protective Order For Materials From Non–Government Organizations filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order Protective Order For Materials From Non–Government Organizations)(Donahue, Patricia) (Entered: 05/02/2008)
05/02/2008	<u>204</u>	STIPULATION for Order Protective Order Re Documents From Agape International Missions filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order Protective Order Re Documents From Agape International Missions)(Donahue, Patricia) (Entered: 05/02/2008)
05/05/2008	<u>217</u>	RESPONSE TO COURTS PROPOSED JURY QUESTIONS filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 05/05/2008)
05/05/2008	<u>218</u>	NOTICE OF MOTION AND MOTION in Limine to Preclude ANY TESTIMONY, EVIDENCE, REFERENCES, OR ARGUMENTS ABOUT THE MCMARTIN PRESCHOOL CASES Filed by Plaintiff USA as to Defendant Michael Joseph Pepe Motion set for hearing on 5/7/2008 at 08:00 AM before Judge Dale S. Fischer. (Attachments: # <u>1</u> Exhibit A)(Lulejian, John) (Entered: 05/05/2008)
05/05/2008	<u>224</u>	PROTECTIVE ORDER For Materials From Non–Government Organizations by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. Re: Stipulation between the parties <u>202</u> . (mg) (Entered: 05/06/2008)
05/05/2008	<u>232</u>	SEALED DOCUMENT – EX PARTE APPLICATION TO FILE UNDER SEAL EX PARTE APPLICATION TO SHORTEN TIME.(cbr) (Entered: 05/08/2008)
05/05/2008	<u>233</u>	SEALED DOCUMENT – ORDER FILING UNDER SEAL THE MOTION TO SHORTEN TIME. (cbr) (Entered: 05/08/2008)
05/05/2008	<u>234</u>	SEALED DOCUMENT – APPLICATION FOR EX PARTE ORDER SHORTENING TIME. (cbr) (Entered: 05/08/2008)
05/05/2008	<u>236</u>	SEALED DOCUMENT – NOTICE OF MOTION TO QUASH (cbr) Additional attachment(s) added on 5/8/2008 (cbr,). (Entered: 05/08/2008)
05/05/2008	<u>237</u>	SEALED DOCUMENT – ORDER TO QUASH DENIED AS MOOT. (cbr) (Entered: 05/08/2008)
05/05/2008	<u>257</u>	MINUTES OF Daubert Hearing held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. The case is called and counsel state their appearances. The Court and counsel briefly discuss several pretrial issues. Governments expert witness, Dr. Noah Craft, is called, sworn and testifies. The Court advises counsel of its tentative ruling and invites argument. A written order will follow. Court Reporter: Pamela Seijas. (sch) (Entered: 05/21/2008)
05/05/2008	<u>266</u>	LIST OF EXHIBITS AND WITNESSES at Daubert Hearing as to Michael Joseph Pepe. Dr. Noah Craft Called by GOV. (bm) (Entered: 05/22/2008)
05/06/2008	<u>222</u>	MEMORANDUM OF LAW filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Donahue, Patricia) (Entered: 05/06/2008)
05/06/2008	<u>223</u>	MEMORANDUM OF LAW filed by Plaintiff USA as to Defendant Michael Joseph Pepe <i>Regarding Prior Consistent Statements And Identifications Of Defendant Pursuant To Federal Rules Of Evidence 801(d)(B) And (C)</i> (Lulejian, John) (Entered: 05/06/2008)
05/06/2008	<u>225</u>	RESPONSE TO COURTS MINUTE ORDER RE: GOVERNMENTS MOTION FOR INTRODUCTION OF EVIDENCE UNDER FEDERAL RULE OF EVIDENCE 404(b) filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 05/06/2008)
05/06/2008	<u>227</u>	EXHIBIT LIST filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Lulejian, John) (Entered: 05/06/2008)

05/06/2008	<u>228</u>	MINUTES (IN CHAMBERS)ORDER GRANTING in Part and DENYING in PartDefendants Motion in Limine To Exclude MoleIdentification Testimony (Docket No. 167) by Judge Dale S. Fischer : Defendant Michael Joseph Pepe is charged with seven counts of engaging in illicit sexual conduct in foreign places in violation of 18 U.S.C. § 2423(c). The First Superseding Indictment alleges that, between September 2005 and June 2006, Defendant traveled to Cambodia and engaged in illicit sexual conduct with seven minors. Having considered the parties submissions, taken evidence, and heard the oral arguments of counsel, the Court GRANTS in part and DENIES in part Defendants Motion. (See Minute Order for further details) (yl) (Entered: 05/07/2008)
05/06/2008	<u>229</u>	Seal Document– Government's Exparte Application for Order sealing the Government's witness statements filed In Camera and Under Seal.(mat) (Entered: 05/08/2008)
05/06/2008	<u>230</u>	ORDER granting Exparte Application for Order sealing the Government's witness statements filed In Camera and Under Seal <u>229</u> , by Judge Dale S Fischer. (mat) (Entered: 05/08/2008)
05/07/2008	<u>258</u>	MINUTES OF JURY TRIAL – 1st Day held before Judge Dale S. Fischer, jury selection begun as to Defendant Michael Joseph Pepe (1) on Count 1–2,1–2,1s–7s. Jury empanelled and sworn. Jury Trial continued to 5/9/2008 at 8:00 AM. Court Reporter: Pamela Seijas. (bm) (Entered: 05/21/2008)
05/08/2008	<u>235</u>	SEALED DOCUMENTS OBJECTION to Exhibit List <u>227</u> , filed by Defendant Michael Joseph Pepe (Attachments: # 1 Exhibit 1201# 2 Exhibit 1219# 3 Exhibit 1234–1237# 4 Exhibit 1266–1270# 5 Exhibit 2010, 2011# 6 Exhibit 2012–2015)(Gunn, Carlton) Additional attachment(s) added on 5/9/2008 (sm,). Modified on 5/9/2008 (sm,). (Entered: 05/08/2008)
05/08/2008	<u>239</u>	NOTICE of Manual Filing of Ex Parte Application to Seal Document; (Proposed) Order To Seal Document; and Government's Submission Regarding Deposition Testimony of Cheong Thi Sang And Response To Defendant's Objections filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Donahue, Patricia) (Entered: 05/08/2008)
05/08/2008	<u>240</u>	MEMORANDUM OF POINTS AND AUTHORITIES RE: TESTIMONY ABOUT REASONS FOR INVESTIGATING DEFENDANT filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 05/08/2008)
05/09/2008	<u>241</u>	RESPONSE TO GOVERNMENT SUBMISSION REGARDING DEPOSITION TESTIMONY OF CHEONG THI SANG IN RESPONSE TO DEFENDANTS OBJECTIONS filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 05/09/2008)
05/09/2008	<u>242</u>	NOTICE of Manual Filing of Ex Parte Application to Seal Document; [Proposed] Order Sealing Document; and Government's Response To Defendant's Memorandum Of Points And Authorities Re: Objections Made During Deposition Testimony Of Defense Witness Koeung Lang filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Lulejian, John) (Entered: 05/09/2008)
05/09/2008	<u>256</u>	TRANSCRIPT filed as to Michael Joseph Pepe for dates of 5/5/08 before Judge Dale S. Fischer, Court Reporter: Pamela A. Seijas. (bem,) (sm). (sm). (Entered: 05/21/2008)
05/09/2008	<u>259</u>	MINUTES OF Jury Trial – 2nd Day held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. Opening statements made both government and defense counsel. Witnesses called, sworn and testified. Exhibits identified and admitted. Jury Trial continued to 5/13/2008 at 8:00 AM. Court Reporter: Pamela Seijas. (bm) (Entered: 05/21/2008)
05/12/2008	<u>244</u>	NOTICE of Manual Filing of Ex Parte Application to Seal Document; (Proposed) Order Sealing Document; and Government's Response To Defendant's Objections Made During The Deposition Testimony of Ly Kim Eng filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Lulejian, John) (Entered: 05/12/2008)
05/12/2008	<u>246</u>	MINUTES (IN CHAMBERS) by Judge Dale S. Fischer: Proceedings: Order Re Objections to Exhibits. (See document for details). (mg) (Entered: 05/13/2008)

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05/12/2008	<u>248</u>	SEALED DOCUMENT – EX PARTE APPLICATION TO FILE UNDER SEAL THE GOVERNMENT'S SUBMISSION REGARDING DEPOSITION TESTIMONY OF CHEONG THI SANG AND RESPONSE TO DEFENDANT'S OBJECTIONS. (cbr) (Entered: 05/14/2008)
05/12/2008	<u>249</u>	SEALED DOCUMENT – ORDER FILING UNDER SEAL GOVERNMENT'S SUBMISSION REGARDING DEPOSITION TESTIMONY OF CHEONG THI SANG AND RESPONSE TO DEFENDANT'S OBJECTIONS. (cbr) (Entered: 05/14/2008)
05/12/2008	<u>250</u>	SEALED DOCUMENT – GOVERNMENT'S SUBMISSION REGARDING DEPOSITION TESTIMONY OF CHEONG THI SANG AND RESPONSE TO DEFENDANT'S OBJECTIONS. (cbr) (Entered: 05/14/2008)
05/12/2008	<u>251</u>	SEALED DOCUMENT – MINUTES OF IN CHAMBERS ORDER. (cbr) (Entered: 05/14/2008)
05/13/2008	<u>247</u>	RESPONSE TO GOVERNMENTS RESPONSE TO DEFENDANTS OBJECTIONS MADE DURING THE DEPOSITION TESTIMONY OF LY KIM ENG filed by Defendant Michael Joseph Pepe Re: Notice of Manual Filing (G-92), Notice of Manual Filing (G-92) <u>244</u> (Attachments: # <u>1</u> Exhibit A)(Gunn, Carlton) (Entered: 05/13/2008)
05/13/2008	<u>260</u>	MINUTES OF Jury Trial – 3rd Day held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. Witnesses called, sworn and testified. Exhibits identified and admitted. Jury Trial continued to 5/14/2008 at 8:00 AM. Court Reporter: Pamela Seijas. (bm) (Entered: 05/21/2008)
05/13/2008	<u>276</u>	NOTICE of Manual Filing of Notice to Withdraw Motion to Quash the Subpoena of the Federal Public Defender for Records Held by Agape International Mission; [Proposed] Order Granting Notice to Withdraw Motion to Quash; filed by Respondent Agape International Mission (mg) (Entered: 05/28/2008)
05/14/2008	<u>252</u>	RESPONSE TO GOVERNMENTS RESPONSE TO DEFENDANTS MEMORANDUM OF POINTS AND AUTHORITIES RE: OBJECTIONS MADE DURING THE DEPOSITION TESTIMONY OF DEFENSE WITNESS KOEUNG LANG filed by Defendant Michael Joseph Pepe Re: Notice of Manual Filing (G-92), Notice of Manual Filing (G-92) <u>242</u> (Gunn, Carlton) (Entered: 05/14/2008)
05/14/2008	<u>261</u>	MINUTES OF Jury Trial – 4th Day held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. Witnesses called, sworn and testified. Exhibits identified and admitted. Jury Trial continued to 5/15/2008 at 8:00 AM. Court Reporter: Pamela Seijas. (bm) (Entered: 05/21/2008)
05/15/2008	<u>254</u>	MINUTES (IN CHAMBERS) by Judge Dale S. Fischer: Proceedings: Further Order Re Objections to Deposition Testimony of Cheong Thi Sang. (mg) (Entered: 05/19/2008)
05/15/2008	<u>262</u>	MINUTES OF Jury Trial – 5th Day held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. Witnesses called, sworn and testified. Exhibits identified and admitted. Jury Trial continued to 5/16/2008 at 8:00 AM. Court Reporter: Pamela Seijas. (bm) (Entered: 05/21/2008)
05/16/2008	<u>253</u>	MINUTES (IN CHAMBERS) by Judge Dale S. Fischer: Proceedings: Order Re Objections to Deposition Testimony of Ly Kim Eng. (mg) (Entered: 05/19/2008)
05/16/2008	<u>263</u>	MINUTES OF Jury Trial – 6th Day held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. Witnesses called, sworn and testified. Exhibits identified and admitted. Jury Trial continued to 5/20/2008 at 8:00 AM. Court Reporter: Pamela Seijas. (bm) (Entered: 05/21/2008)
05/19/2008	<u>255</u>	PROPOSED JURY INSTRUCTIONS (Joint set) filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Donahue, Patricia) (Entered: 05/19/2008)
05/19/2008	<u>265</u>	MINUTES (IN CHAMBERS) by Judge Dale S. Fischer: Proceedings: Order Re Objections to Deposition Testimony of Keoung Lang (Docket No. 209). See document for details. (mg) (Entered: 05/22/2008)

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05/20/2008	<u>264</u>	MINUTES OF Jury Trial – 7th Day held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. Witnesses called, sworn and testified. Exhibits identified and admitted. Jury Trial continued to 5/21/2008 at 8:00 AM. Court Reporter: Pamela Seijas. (bm) (Entered: 05/21/2008)
05/20/2008	<u>267</u>	MINUTES OF (IN CHAMBERS) ORDER by Judge Dale S. Fischer GRANTING the Government's MOTION in Limine to Preclude ANY TESTIMONY, EVIDENCE, REFERENCES, OR ARGUMENTS ABOUT THE MCMARTIN PRESCHOOL CASES <u>218</u> . The Governments motion is GRANTED. Defendant may not present any testimony, evidence, references, or arguments regarding the McMartin Preschool cases or other unrelated cases where improper questioning of children was alleged. Mr. Maloney may, however, state that he was consulted or testified as an expert in that case. (See Order for Further Details). (sch) (Entered: 05/22/2008)
05/21/2008	<u>269</u>	MINUTES OF Jury Trial – 8th Day held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. Witnesses called, sworn and testified. Exhibits identified and admitted. Government rests. Motion for judgment of acquittal (FRCrP 29) is submitted. Jury Trial continued to 5/22/2008 at 8:00 AM. Court Reporter: Pamela Seijas. (bm) (Entered: 05/23/2008)
05/21/2008	<u>277</u>	NOTICE OF WITHDRAWAL of Motion to Quash, filed by Respondnet Agape International Mission. (Attachments: # <u>1</u> Proposed Order)(mg) (Entered: 05/28/2008)
05/22/2008	<u>268</u>	GOVERNMENT'S REQUEST FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Lulejian, John) (Entered: 05/22/2008)
05/22/2008	<u>270</u>	MINUTES OF Jury Trial – 9th Day held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. Witnesses called, sworn and testified. Exhibits identified and admitted. Jury Trial continued to 5/23/2008 at 8:00 AM. Court Reporter: Pamela Seijas. (bm) (Entered: 05/23/2008)
05/23/2008	<u>293</u>	MINUTES OF Jury Trial – 10th Day held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. Witnesses called, sworn and testified. Exhibits identified and admitted. Motion for judgment of acquittal (FRCrP 29) is submitted. Jury Trial contined to 5/27/2008 at 8:00 AM. Court Reporter: Pamela Seijas. (bm) (Entered: 06/10/2008)
05/27/2008	<u>271</u>	Seal Document– Exparte Application to file Under Seal the Government's response to defendant's objections made during the deposition testimony of Ly Kim Eng.(mat) (Entered: 05/28/2008)
05/27/2008	<u>272</u>	Seal Document– Order filing Under Seal the Government's response to defendant's objections made during the deposition testimony of Ly Kim Eng. (mat) Modified on 5/28/2008 (mat). (Entered: 05/28/2008)
05/27/2008	<u>273</u>	Seal Document– Government's Response to defendant's objections made during the deposition testimony of Ly Kim Eng. (mat) (Entered: 05/28/2008)
05/27/2008	<u>274</u>	Seal Document– Exparte Application to file Under Seal the Government's Response to defendant's memorandum of points and authorities Re: Deposition testimony of defense witness Koeung Lang.(mat) (Entered: 05/28/2008)
05/27/2008	<u>275</u>	Seal Document– Order filing Under Seal the Government's response to defendant's memorandum of points and authorities Re: Deposition testimony of defense witness Koeung Lang. (mat) (Entered: 05/28/2008)
05/27/2008	<u>278</u>	Seal Document– Government's Response to defendant's Memorandum of Points and Authorities Re: Objections made during deposition testimony of defense witness Koeung Lang. (mat) (Entered: 05/28/2008)
05/27/2008	<u>294</u>	MINUTES OF Jury Trial – 11th Day held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. Witnesses called, sworn and testified. Exhibits identified and admitted. Jury Trial continued to 5/28/2008 at 8:00 AM. Court Reporter: Miriam Baird. (bm) (Entered: 06/10/2008)
05/28/2008	<u>295</u>	MINUTES OF Jury Trial – 12th Day held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. Exhibits identified and admitted. Defendant(s) rest. Closing arguments made. Court instructs jury. Baliff sworn. Alternates excused. Jury

		retires to deliberate. Jury Trial continued to 5/29/2008 at 8:00 AM. Court Reporter: Pamela Seijas. (bm) (Entered: 06/10/2008)
05/29/2008	<u>279</u>	STIPULATION REGARDING ACCURACY OF GOVERNMENT EXHIBIT NO. 1242 filed by Plaintiff USA as to Defendant Michael Joseph Pepe(sch) (Entered: 05/30/2008)
05/29/2008	<u>280</u>	STIPULATION REGARDING DEFENDANT'S CITIZENSHIP filed by Plaintiff USA as to Defendant Michael Joseph Pepe(sch) (Entered: 05/30/2008)
05/29/2008	<u>281</u>	STIPULATION REGARDING DEFENDANT'S TRAVEL FROM THE UNITED STATES OF AMERICA TO THE KINGDOM OF CAMBODIA filed by Plaintiff USA as to Defendant Michael Joseph Pepe(sch) (Entered: 05/30/2008)
05/29/2008	<u>282</u>	STIPULATION REGARDING TESTIMONY OF MAUREEN O'HARA filed by Plaintiff USA as to Defendant Michael Joseph Pepe(sch) (Entered: 05/30/2008)
05/29/2008	<u>283</u>	STIPULATION REGARDING COMPUTER MEDIA filed by Plaintiff USA as to Defendant Michael Joseph Pepe(sch) (Entered: 05/30/2008)
05/29/2008	<u>284</u>	STIPULATION REGARDING ACCURACY OF GOVERNMENT EXHIBIT NO. 2005 filed by Plaintiff USA as to Defendant Michael Joseph Pepe(sch) (Entered: 05/30/2008)
05/29/2008	<u>285</u>	STIPULATION REGARDING CAMBODIAN CALENDAR filed by Plaintiff USA as to Defendant Michael Joseph Pepe(sch) (Entered: 05/30/2008)
05/29/2008	<u>286</u>	STIPULATION REGARDING TELEPHONE CALLS PLACED BY DEFENDANT filed by Plaintiff USA as to Defendant Michael Joseph Pepe(sch) (Entered: 05/30/2008)
05/29/2008	<u>287</u>	STIPULATION filed by Plaintiff USA as to Defendant Michael Joseph Pepe (See Stipulation for Further Details). (sch) (Entered: 05/30/2008)
05/29/2008	<u>288</u>	STIPULATION filed by Plaintiff USA as to Defendant Michael Joseph Pepe (See Stipulation for Further Details)(sch) (Entered: 05/30/2008)
05/29/2008	<u>289</u>	STIPULATION filed by Plaintiff USA as to Defendant Michael Joseph Pepe (See Stipulation for Further Details).(sch) (Entered: 06/02/2008)
05/29/2008	<u>290</u>	STIPULATION REGARDING CHILDREN'S NAMES filed by Plaintiff USA as to Defendant Michael Joseph Pepe (See Stipulation for Further Details).(sch) (Entered: 06/02/2008)
05/29/2008	<u>291</u>	RECEIPT FOR RELEASE OF EXHIBITS to Counsel Upon Verdict/Judgment at Trial; as to Defendant Michael Joseph Pepe. Pursuant to stip of counsel and/or by Order of the Court, all exhibits listed on Joint exhibits list are returned to counsel for respective party(ies) (yl) (Entered: 06/02/2008)
05/29/2008	<u>292</u>	Jury Instructions (Given) by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, (yl) (Entered: 06/02/2008)
05/29/2008	<u>296</u>	MINUTES OF Jury Trial – 13th Day held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. Completed by jury verdict/submitted to court. Motion for mistrial by Defense is denied. Bailiff sworn. Jury Verdict as follows: Michael Joseph Pepe (1) Guilty on Count 1s–6s. Jury polled. Filed Witness & Exhibit lists. Filed Jury notes. Filed Jury instructions. Filed Jury Verdict. Defendant referred to Probation Office for Investigation and Report and continued to 9/3/2008 at 3:00 PM for sentencing. Court Reporter: Pamela Seijas. (bm) (Entered: 06/10/2008)
05/29/2008	<u>298</u>	AMENDED MINUTES OF Jury Trial – 13th Day held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. Completed by jury verdict/submitted to the court. Motion for mistrial by Defense is denied. Baliff sworn. Jury Verdict as follows: Dft Guilty on count(s) 1–7. Jury polled. Filed Witness & Exhibit lists. Filed Jury notes. Filed Jury Instructions. Filed Jury Verdict. Defendant referred to Probation Office for Investigation and Report and continued to 9/3/08 @ 3pm for sentencing. Court Reporter: Pamela Seijas. (bm) (Entered: 06/17/2008)

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07/14/2008	<u>300</u>	STIPULATION for Order for Extension of Time to File a Motion for New Trial filed by Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Gunn, Carlton) (Entered: 07/14/2008)
07/14/2008	<u>301</u>	ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, GRANTING Stipulation for Order, <u>300</u> . GOOD CAUSE HAVING BEEN SHOWN, IT IS HEREBY ORDERED that the deadline for filing a motion for new trial in this matter shall extended to August 11, 2008. (ca) (Entered: 07/15/2008)
08/11/2008	<u>302</u>	EX PARTE APPLICATION to Continue Sentencing Hearing from September 3, 2008 at 8:30 a.m. to November 4, 2008 at 8:30 a.m.. Filed by Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Brown, Charles) (Entered: 08/11/2008)
08/11/2008	<u>303</u>	ORDER CONTINUING SENTENCING HEARING by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, re EX PARTE APPLICATION to Continue Sentencing Hearing <u>302</u> . GOOD CAUSE having been shown, it is hereby ordered that the sentencing hearing currently scheduled for September 3, 2008 at 8:30 a.m. shall be continued until 11/4/2008 at 08:30 A.M. or to another date and time convenient with the court. (sch) (Entered: 08/12/2008)
08/13/2008	<u>304</u>	EX PARTE APPLICATION for Reconsideration re Order on Ex Parte Application,, Order to Continue Trial, Change of Plea or Sentencing, <u>303</u> Filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Lulejian, John) (Entered: 08/13/2008)
08/14/2008	<u>305</u>	DECLARATION of filed by Defendant Michael Joseph Pepe RE: EX PARTE APPLICATION for Reconsideration re Order on Ex Parte Application,, Order to Continue Trial, Change of Plea or Sentencing, <u>303</u> <u>304</u> (Gunn, Carlton) (Entered: 08/14/2008)
08/14/2008	<u>306</u>	MINUTES OF IN CHAMBERS ORDER by Judge Judge Dale S. Fischer:, RE: EX PARTE APPLICATION for Reconsideration re Order on Ex Parte Application,, Order to Continue Trial, Change of Plea or Sentencing, <u>303</u> <u>304</u> . Motion granted in part. Se Minute Order for specifics. (dp) (Entered: 08/14/2008)
08/15/2008	<u>307</u>	MINUTES OF IN CHAMBERS ORDER by Judge Judge Dale S. Fischer:, (Status Conference set for 8/20/2008 03:00 PM before Judge Dale S. Fischer.) (dp) (Entered: 08/15/2008)
08/20/2008	<u>308</u>	STIPULATION to Continue Sentencing from 9/3/08 to 9/18/08 filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order Continue Sentencing)(Donahue, Patricia) (Entered: 08/20/2008)
08/20/2008	<u>309</u>	ORDER CONTINUING SENTENCING by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, re Stipulation to Continue <u>308</u> . Having received the Stipulation to Continue Sentencing, the Court HEREBY ORDERS that the Sentencing is continued from September 3, 2008 to 9/18/2008 at 03:00 P.M. (sch) (Entered: 08/21/2008)
08/25/2008	<u>310</u>	EX PARTE APPLICATION for Order for Scheduling a Status Conference re Defendant Request for New Counsel Filed by Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Gunn, Carlton) (Entered: 08/25/2008)
08/28/2008	<u>311</u>	STIPULATION to Continue Sentencing from September 18, 2008 to September 25, 2008 filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order Continue Sentencing)(Donahue, Patricia) (Entered: 08/28/2008)
08/28/2008	<u>312</u>	ORDER Re EX PARTE APPLICATION for Order Scheduling a Status Conference <u>310</u> by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. GOOD CAUSE HAVING BEEN SHOWN, IT IS HEREBY ORDERED that a status conference shall be scheduled in this matter, on 9/3/2008, at 03:00 P.M. for the Court to consider a request by defendant for appointment of new counsel for the purpose of investigating defendants belief that he was possibly not provided with effective assistance of counsel. (sch) (Entered: 08/28/2008)
08/28/2008	<u>313</u>	ORDER CONTINUING SENTENCING by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, re Stipulation to Continue <u>311</u> . Having received the Stipulation to Continue Sentencing, the Court HEREBY ORDERS that the Sentencing is

		continued from September 18, 2008 to 9/25/2008 at 02:30 PM. (sch) (Entered: 08/28/2008)
09/02/2008	<u>314</u>	RESPONSE filed by Plaintiff USA as to Defendant Michael Joseph Pepe <i>Regarding Defendant's Request For Appointment of New Counsel To Investigate Ineffective Assistance Of Counsel</i> (Donahue, Patricia) (Entered: 09/02/2008)
09/03/2008	<u>315</u>	MINUTES OF IN CHAMBERS PROCEEDINGS: Hearing on Defendant's Request to Investigate a Claim of Ineffective Assistance of Counsel. (Under Seal) (mat) (Entered: 09/10/2008)
09/09/2008	<u>316</u>	MINUTES OF IN CHAMBERS PROCEEDINGS:(In Chambers and Under Seal) Order Granting Request of Paul Horgan to be Relieved and Denying Appointment of New CJA Counsel. (mat) (Entered: 09/10/2008)
09/16/2008	<u>317</u>	NOTICE of Manual Filing of Application to File Under Seal; Order to file Under Seal; Second Ex Parte; Order bifurcating Sentencing; Order Continuing Sentencing filed by Defendant Michael Joseph Pepe (Brown, Charles) (Entered: 09/16/2008)
09/16/2008	<u>324</u>	SEALED DOCUMENT – APPLICATION TO FILE MICHAEL JOSEPH PEPE'S EX PARTE REQUEST FOR CONTINUANCE UNDER SEAL. (cbr) (Entered: 09/26/2008)
09/16/2008	<u>325</u>	SEALED DOCUMENT – ORDER GRANTING DEFENSE REQUEST TO FILE SECOND EX PARTE APPLICATION FOR A COTINUANCE UNDER SEAL**DOCUMENT SEALED** (cbr) (Entered: 09/26/2008)
09/16/2008	<u>326</u>	SEALED DOCUMENT – SECOND EX PARTE APPLICATION AND PROPOSED ORDERS CONTINUING OR BIFURCATING THE SENTENCING HEARING.(cbr) (Entered: 09/26/2008)
09/17/2008	<u>318</u>	POSITION WITH RESPECT TO SENTENCING FACTORS filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Exhibit A)(Donahue, Patricia) (Entered: 09/17/2008)
09/18/2008	<u>319</u>	NOTICE of Manual Filing of Government's Ex Parte Application For Order Sealing Document; Proposed Order Sealing Document; Under Seal Document filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Donahue, Patricia) (Entered: 09/18/2008)
09/18/2008	<u>320</u>	OBJECTION to Notice of Manual Filing (G-92) <u>317</u> , filed by Plaintiff USA as to Defendant Michael Joseph Pepe <i>Government's Opposition To Defendant's Second Ex Parte Application To Continue or Bifurcase Sentencing</i> (Donahue, Patricia) (Entered: 09/18/2008)
09/18/2008	<u>321</u>	MINUTES OF HEARING ON SECOND EX PARTE APPLICATION TO CONTINUE SENTENCING DATE by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. The case is called and counsel state their appearances. The Court and counsel discuss the application. Government counsel will inform the Clerk by September 22, 2008 regarding the September 25, 2008 sentencing date. The Court will issue an order. Court Reporter: Pamela Seijas. (sch) (Entered: 09/19/2008)
09/18/2008	<u>322</u>	MINUTES OF (IN CHAMBERS) ORDER Granting Defendant's Second Ex Parte Application <u>317</u> by Judge Dale S. Fischer. The Court has received the Defendants Second Ex Parte Application and [Proposed] Orders Continuing (or) Bifurcating the Sentencing Hearing. The Government should advise the Court and counsel no later than September 22 whether it wishes to have the victims present to be heard on the issue of sentencing on September 25. The Defendant's Ex Parte Application is GRANTED. (See Order for Further Details). (sch) (Entered: 09/19/2008)
09/19/2008	<u>327</u>	SEALED DOCUMENT – GOVERNMENT'S EX PARTE APPLICATION FOR ORDER (1) SEALING GOVERNMENT'S SUBMISSION OF VICTIM IMPACT AND RESTITUTION INFORMATION; AND (2) ALLOWING DEFENDANT TO READ BUT NOT TO KEEP, A COPY OF THE GOVERNMENT'S SUBMISSION OF VICTIM IMPACT AND RESTITUTION.(cbr) (Entered: 09/26/2008)
09/19/2008	<u>328</u>	SEALED DOCUMENT – ORDER **DOCUMENT SEALED** (cbr) (Entered: 09/26/2008)

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09/19/2008	<u>329</u>	SEALED DOCUMENT – GOVERNMENT'S SUBMISSION OF VICTIM IMPACT AND RESTITUTION INFORMATION. (cbr) (Entered: 09/26/2008)
09/24/2008	<u>323</u>	NOTICE of Manual Filing of Government's Ex Parte Application For Order Sealing Doncument; (Proposed) Order Sealing Document; Under Seal Document filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Donahue, Patricia) (Entered: 09/24/2008)
09/24/2008	<u>330</u>	SEALED DOCUMENT– Government's Exparte Application for Order (1) Sealing Government's Supplemental Submission of Victim Impact Information; And (2) Allowing defendant to read, but not to keep, a copy of the Government's Supplemental Submission of Victim Impact Information. (mat) (Entered: 09/26/2008)
09/24/2008	<u>331</u>	ORDER granting <u>330</u> , by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. (mat) (Entered: 09/26/2008)
09/24/2008	<u>332</u>	SEALED DOCUMENT– Government's Supplemental Submission of Victim Impact Information (mat) (Entered: 09/26/2008)
09/25/2008	<u>333</u>	MINUTES OF Bifurcated Sentencing Proceeding – Victim Impact Statements And Restitution Issues held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. The case is called and counsel state their appearances. The victims and their guardians/custodians provide their statements to the Court. (See Minute Order for Further Details). Court Reporter: Pamela Seijas. (sch) (Entered: 09/29/2008)
10/28/2008	<u>334</u>	STIPULATION to Continue sentencing from November 4, 2008 at 8:30am to January 12, 2009 at 8:30 am filed by Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Brown, Charles) (Entered: 10/28/2008)
10/28/2008	<u>335</u>	ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe Stipulation to Continue <u>334</u> GOOD CAUSE having been shown, it is hereby ordered that the sentencing hearing currently scheduled for November 4, 2008 at 8:30 a.m. shall be continued until January 12, 2009 at 8:30 a.m., or another date and time convenient with the court. (yl) (Entered: 10/29/2008)
01/05/2009	<u>337</u>	ORDER by Judge Dale S. Fischer Continuing Sentencing Hearing as to Defendant Michael Joseph Pepe. It is hereby ordered that the sentencing hearing currently scheduled for January 12, 2009 at 8:30 a.m., shall be continued until March 26, 2009 at 1:30 p.m. before Judge Dale S. Fischer. Any additional defense pleadings shall be filed by February 25 and any government response shall be due by March 11 with any defense reply due by March 18, 2009. Re Stipulation <u>336</u> . (mg) (Entered: 01/06/2009)
01/06/2009	<u>336</u>	STIPULATION to Continue Sentencing Hearing from January 12, 2009 at 8:30 a.m. to March 26, 2009 at 1:30 p.m. filed by Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Brown, Charles) (Entered: 01/06/2009)
03/11/2009	<u>338</u>	NOTICE of Manual Filing of Ex Parte Application To Seal Government's Response To Defendant's Position Re Sentencing Factors; [Proposed] Order; Government's Response To Defendant's Position Re Sentencing Factors filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Donahue, Patricia) (Entered: 03/11/2009)
03/12/2009	<u>339</u>	NOTICE of Manual Filing of Ex Parte Application to File Under Seal; Memorandum of Points and Authorities; [Proposed] Orders, in the Alternative; Defendant's Position Re: Sentencing Factors; Exhibits filed by Defendant Michael Joseph Pepe (Brown, Charles) (Entered: 03/12/2009)
03/12/2009	<u>340</u>	SEALED DOCUMENT– Exparte Application to Seal Government's Response to Defendant's Position Re: Sentencing Factors.(mat) (Entered: 03/17/2009)
03/12/2009	<u>341</u>	Order Granting Exparte Application <u>340</u> to Seal by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. (mat) (Entered: 03/17/2009)
03/12/2009	<u>342</u>	SEALED DOCUMENT– Government's Response to Defendant's Position Re: Sentencing Factors. (mat) (Entered: 03/17/2009)
03/16/2009	<u>343</u>	SEALED DOCUMENT– Exparte Application to File Under Seal; Memorandum of Points and Authorities.(mat) (Entered: 03/18/2009)

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03/16/2009	<u>344</u>	SEALED DOCUMENT– Orders (mat) (Entered: 03/18/2009)
03/16/2009	<u>345</u>	SEALED DOCUMENT– Defendant's Position Re: Sentencing Factors; Exhibits.(mat) (Entered: 03/18/2009)
03/25/2009	<u>348</u>	SUPPLEMENT filed by Defendant Michael Joseph Pepe <i>Re: Restitution</i> (Brown, Charles) (Entered: 03/25/2009)
03/25/2009	<u>349</u>	MINUTES OF IN CHAMBERS ORDER by Judge Dale S. Fischer: as to Defendant Michael Joseph Pepe, The Court, having just received supplemental papers from the defense, continues the sentencing hearing on its own motion. The parties are to contact the Court's clerk with a mutually convenient date for sentencing. (sce) (Entered: 03/26/2009)
04/03/2009	<u>350</u>	NOTICE OF LODGING filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Lulejian, John) (Entered: 04/03/2009)
04/06/2009	<u>351</u>	ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, (Sentencing continued to 4/28/2009 01:30 PM before Judge Dale S. Fischer.) (sce) (Entered: 04/07/2009)
04/20/2009	<u>352</u>	NOTICE of Manual Filing of Government's Ex Parte Application to Seal Document; (Proposed) Order; and Under Seal Document filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Lulejian, John) (Entered: 04/20/2009)
04/21/2009	<u>353</u>	SEALED DOCUMENT– Government's Exparte Application for an Order (1) Sealing Government's Response to Defendant's Supplemental Filing Re: Restitution, and (2) Allowing Defendant to Read, But Not to Keep a Copy of The Government's Response to Defendant's Supplemental Filing Re: Restitution; Memorandum of Points & Authorities; Declaration of John J. Lulejian [Proposed] Order.(mat) (Entered: 04/23/2009)
04/21/2009	<u>354</u>	SEALED DOCUMENT– ORDER (mat) (Entered: 04/23/2009)
04/21/2009	<u>355</u>	SEALED DOCUMENT– Government's Response to Defendant's Supplemental Filing Re: Restitution; Memorandum of Points and Authorities; Declaration of Don Brewster. (mat) (Entered: 04/23/2009)
04/23/2009	<u>356</u>	NOTICE of Manual Filing of Government's Ex Parte Application for An Order Sealing In Camera Filing; Memorandum of Points and Authorities; Declaration of John J. Lulejian; (Proposed) Order in Camera and Under Seal; and in Camera and Under Seal Document filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Lulejian, John) (Entered: 04/23/2009)
04/23/2009	<u>357</u>	MINUTES OF IN CHAMBERS ORDER by Judge Dale S. Fischer: as to Defendant Michael Joseph Pepe,(Sentencing continued to 6/29/2009 03:00 PM before Judge Dale S. Fischer.) (sce) (Entered: 04/24/2009)
06/23/2009	<u>361</u>	NOTICE of Manual Filing of Government's Ex Parte Application For An Order Sealing In Camera and Under Seal Filing; [Proposed] Order Sealing Document In Camera And Under Seal; Under Seal Document filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Donahue, Patricia) (Entered: 06/23/2009)
06/23/2009	<u>362</u>	MINUTES OF IN CHAMBERS ORDER by Judge Dale S. Fischer: as to Defendant Michael Joseph Pepe. The Court, on its own motion, continues the sentencing to a date to be agreed to by counsel after consultation with this Courts Courtroom Deputy Clerk. (sce) (Entered: 06/25/2009)
07/15/2009	<u>367</u>	STIPULATION for Hearing as to BRIEFING SCHEDULE AND HEARING DATE, STIPULATION for Order BRIEFING SCHEDULE AND HEARING DATE filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Donahue, Patricia) (Entered: 07/15/2009)
07/15/2009	<u>368</u>	ORDER re BRIEFING SCHEDULE AND HEARING DATE by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe: GRANTING stipulation for Hearing, Stipulation for Order <u>367</u> . IT IS HEREBY ORDERED as follows: 1. The deadline for defendant to file any pleading in response to the governments in camera filings produced to defendant pursuant to a protective order is July 27, 2009. 2. The deadline for the government to file any pleading in reply to a defense pleading is August 14,

		2009. 3. If the court conducts a hearing on this matter, that hearing will take place on September 2, 2009 at 2:30 p.m.. (shb) (Entered: 07/16/2009)
07/20/2009	<u>369</u>	NOTICE of Manual Filing of Government's EX Parte Application For An Order Sealing In Camera And Under Seal Filing; (Proposed) Order (Filed In Camera and Under Seal; and In Camera and Under Seal Document filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Donahue, Patricia) (Entered: 07/20/2009)
07/27/2009	<u>370</u>	NOTICE of Manual Filing of Defense Response to Government's In Camera Filing; Request for Evidentiary Hearing and Motion to Compel Discovery Re: Evidence of Possible Government Misconduct; Ex Parte Application to File Under Seal; [Proposed] Orders, in the Alternative filed by Defendant Michael Joseph Pepe (Brown, Charles) (Entered: 07/27/2009)
07/28/2009	<u>374</u>	SEALED DOCUMENT– Exparte Application to File Under Seal; Defense Response to Government's In Camera Filing; Request for Evidentiary Hearing and Motion to Compel Discovery Re: Evidence of Possible Government Misconduct. (mat) (Entered: 08/03/2009)
07/28/2009	<u>375</u>	SEALED DOCUMENT– Defense Response to Government's In Camera Filing; Request for Evidentiary Hearing and Motion to Compel Discovery Re: Evidence of Possible Government Misconduct. (mat) (Entered: 08/03/2009)
07/28/2009	<u>376</u>	ORDERS, IN THE ALTERNATIVE by Judge Dale S. Fischer: Granting <u>374</u> Exparte Application that Defense Response to Government's In Camera Filing; Request for Evidentiary Hearing and Motion to Compel Discovery Re: Evidence of Possible Government Misconduct(1) shall be filed under seal (es) (Entered: 08/04/2009)
08/17/2009	<u>377</u>	NOTICE of Manual Filing of Government's Ex Parte Application For An Order Sealing Government's Reply to Defendant's In Camera Filing; (Proposed) Order; and Government's Reply To Defendant's Response To Government's In Camera Filing. filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Donahue, Patricia) (Entered: 08/17/2009)
08/18/2009	<u>378</u>	SEALED DOCUMENT– Government's Exparte Application for Order Sealing Government's Reply to Defendant's Response to Government's In Camera Filing; Declaration of Patricia A. Donahue. (mat) (Entered: 08/19/2009)
08/18/2009	<u>379</u>	SEALED DOCUMENT– Order (mat) (Entered: 08/19/2009)
08/18/2009	<u>380</u>	SEALED DOCUMENT– Government's Reply to Defendant's Response to Government's In Camera Filing. Pepe (mat) (Entered: 08/20/2009)
09/02/2009	<u>381</u>	MINUTES OF Evidentiary Hearing held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, Witnesses sworn and examined. Counsel will contact the clerk to set up a hearing date on theremaining matters for an evidentiary hearing. Court Reporter: Pamela Batalo. (sce) (Entered: 09/03/2009)
02/17/2010	<u>386</u>	NOTICE of Manual Filing of Government's Ex Parte Application For An Order Sealing Document Under Seal and In Camera; (Proposed) Order (Under Seal); and Under Seal and In Camera Document filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Donahue, Patricia) (Entered: 02/17/2010)
02/17/2010	<u>387</u>	SEALED DOCUMENT – GOVERNMENT'S EX PARTE APPLICATION FOR AN ORDER SEALING GOVERNMENT'S IN CAMERA SUBMISSION IN RESPONSE TO COURT'S ORDER(lra) (Entered: 02/19/2010)
02/17/2010	<u>388</u>	SEALED DOCUMENT– ORDER (lra) (Entered: 02/19/2010)
02/17/2010	<u>389</u>	SEALED DOCUMENT – IN CAMERA (lra) (Entered: 02/22/2010)
03/09/2010	<u>390</u>	MINUTES OF IN CHAMBERS ORDER by Judge Dale S. Fischer: as to Defendant Michael Joseph Pepe: The Court has reviewed the documents provided by the government under seal with the exception of the phone records. The Court finds that the documents reviewed are not relevant. The request for the documents is denied. (shb) (Entered: 03/09/2010)
03/18/2010	<u>391</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 5/27/08 8:00 am. Court Reporter/Electronic Court Recorder: Miriam V. Baird, phone

		number mvb11893@aol.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 4/8/2010. Redacted Transcript Deadline set for 4/18/2010. Release of Transcript Restriction set for 6/16/2010.(Baird, Miriam) (Entered: 03/18/2010)
03/18/2010	<u>392</u>	NOTICE OF FILING TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings 5/27/08 8:00 am (Baird, Miriam) (Entered: 03/18/2010)
03/23/2010	<u>393</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 5-13-2008. Court Reporter/Electronic Court Recorder: Lynne Nicholson, phone number 213-620-0431. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 4/13/2010. Redacted Transcript Deadline set for 4/23/2010. Release of Transcript Restriction set for 6/21/2010.(Smith, Rita) (Entered: 03/23/2010)
03/23/2010	394	NOTICE OF FILING TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings 05-13-2008(Smith, Rita) (Entered: 03/23/2010)
04/07/2010	<u>395</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 05/07/08; 9:02 a.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 4/28/2010. Redacted Transcript Deadline set for 5/8/2010. Release of Transcript Restriction set for 7/6/2010.(Seijas, Pamela) (Entered: 04/07/2010)
04/07/2010	<u>396</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 05/09/08; 7:50 a.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.co. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 4/28/2010. Redacted Transcript Deadline set for 5/8/2010. Release of Transcript Restriction set for 7/6/2010.(Seijas, Pamela) (Entered: 04/07/2010)
04/07/2010	<u>397</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 05/13/08; 7:54 a.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 4/28/2010. Redacted Transcript Deadline set for 5/8/2010. Release of Transcript Restriction set for 7/6/2010.(Seijas, Pamela) (Entered: 04/07/2010)
04/07/2010	<u>398</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 05/14/08; 7:52 a.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 4/28/2010. Redacted Transcript Deadline set for 5/8/2010. Release of Transcript Restriction set for 7/6/2010.(Seijas, Pamela) (Entered: 04/07/2010)
04/07/2010	<u>399</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 5/15/08; 7:50 a.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 4/28/2010. Redacted Transcript Deadline set for 5/8/2010. Release of Transcript Restriction set for 7/6/2010.(Seijas, Pamela) (Entered: 04/07/2010)

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04/07/2010	<u>400</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 05/16/08; 7:50 a.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 4/28/2010. Redacted Transcript Deadline set for 5/8/2010. Release of Transcript Restriction set for 7/6/2010.(Seijas, Pamela) (Entered: 04/07/2010)
04/07/2010	<u>401</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 05/20/08; 7:46 a.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 4/28/2010. Redacted Transcript Deadline set for 5/8/2010. Release of Transcript Restriction set for 7/6/2010.(Seijas, Pamela) (Entered: 04/07/2010)
04/07/2010	<u>402</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 05/21/08; 7:47 a.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 4/28/2010. Redacted Transcript Deadline set for 5/8/2010. Release of Transcript Restriction set for 7/6/2010.(Seijas, Pamela) (Entered: 04/07/2010)
04/07/2010	<u>403</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 05/22/08; 7:50 a.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 4/28/2010. Redacted Transcript Deadline set for 5/8/2010. Release of Transcript Restriction set for 7/6/2010.(Seijas, Pamela) (Entered: 04/07/2010)
04/07/2010	<u>404</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 5/23/08; 7:50 a.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 4/28/2010. Redacted Transcript Deadline set for 5/8/2010. Release of Transcript Restriction set for 7/6/2010.(Seijas, Pamela) (Entered: 04/07/2010)
04/07/2010	<u>405</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 5/28/08;8:03 a.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 4/28/2010. Redacted Transcript Deadline set for 5/8/2010. Release of Transcript Restriction set for 7/6/2010.(Seijas, Pamela) (Entered: 04/07/2010)
04/07/2010	<u>406</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 5/29/08; 9:00 a.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 4/28/2010. Redacted Transcript Deadline set for 5/8/2010. Release of Transcript Restriction set for 7/6/2010.(Seijas, Pamela) (Entered: 04/07/2010)
04/07/2010	<u>407</u>	NOTICE OF FILING TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings 5/7/08 9:02 a.m.;5/9/08 7:50 a.m.;5/13/08 7:54 a.m.;5/14/08 7:52 a.m.;5/15/08 7:50 a.m.;5/16/08 7:50 a.m.;5/20/08 7:46 a.m.;5/21/08 7:47 a.m.;5/22/08 7:50 a.m.;5/23/08 7:50 a.m.; 5/28/08 8:03 a.m.; 5/29/08 9:00 a.m. (Seijas, Pamela)

		(Entered: 04/07/2010)
04/07/2010	<u>408</u>	SEALED DOCUMENT – TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 05/7/08, 12:14 p.m. to 12:15 p.m.. Court Reporter/Electronic Court Recorder: Pamela A. Seijas, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 4/28/2010. Redacted Transcript Deadline set for 5/8/2010. Release of Transcript Restriction set for 7/6/2010.(cbr) (Entered: 04/08/2010)
05/12/2010	<u>409</u>	NOTICE of Manual Filing of Government's Ex Parte Application for An Order Sealing Government's Transcript Redaction Request; [Proposed] Order Sealing Government's Transcript Redaction Request; and Government's Transcript Redaction Request filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Donahue, Patricia) (Entered: 05/12/2010)
05/18/2010	<u>410</u>	REDACTED TRANSCRIPT filed as to Defendant Michael Joseph Pepe, re Transcript <u>396</u> . Redaction Request due 6/8/2010. Redacted Transcript Deadline set for 6/18/2010. Release of Transcript Restriction set for 8/16/2010.(Seijas, Pamela) (Entered: 05/18/2010)
05/18/2010	<u>411</u>	REDACTED TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 05/13/08, re Transcript <u>397</u> . Redaction Request due 6/8/2010. Redacted Transcript Deadline set for 6/18/2010. Release of Transcript Restriction set for 8/16/2010.(Seijas, Pamela) (Entered: 05/18/2010)
05/18/2010	<u>412</u>	REDACTED TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 05/14/08, re Transcript <u>398</u> . Redaction Request due 6/8/2010. Redacted Transcript Deadline set for 6/18/2010. Release of Transcript Restriction set for 8/16/2010.(Seijas, Pamela) (Entered: 05/18/2010)
05/18/2010	<u>413</u>	REDACTED TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 05/15/08, re Transcript <u>399</u> . Redaction Request due 6/8/2010. Redacted Transcript Deadline set for 6/18/2010. Release of Transcript Restriction set for 8/16/2010.(Seijas, Pamela) (Entered: 05/18/2010)
05/18/2010	<u>414</u>	REDACTED TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 05/16/08, re Transcript <u>400</u> . Redaction Request due 6/8/2010. Redacted Transcript Deadline set for 6/18/2010. Release of Transcript Restriction set for 8/16/2010.(Seijas, Pamela) (Entered: 05/18/2010)
05/18/2010	<u>415</u>	REDACTED TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 5/20/08, re Transcript <u>401</u> . Redaction Request due 6/8/2010. Redacted Transcript Deadline set for 6/18/2010. Release of Transcript Restriction set for 8/16/2010.(Seijas, Pamela) (Entered: 05/18/2010)
05/18/2010	<u>416</u>	REDACTED TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 5/21/08, re Transcript <u>402</u> . Redaction Request due 6/8/2010. Redacted Transcript Deadline set for 6/18/2010. Release of Transcript Restriction set for 8/16/2010.(Seijas, Pamela) (Entered: 05/18/2010)
05/18/2010	<u>417</u>	REDACTED TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 05/22/08, re Transcript <u>403</u> . Redaction Request due 6/8/2010. Redacted Transcript Deadline set for 6/18/2010. Release of Transcript Restriction set for 8/16/2010.(Seijas, Pamela) (Entered: 05/18/2010)
05/18/2010	<u>418</u>	REDACTED TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 05/23/08, re Transcript <u>404</u> . Redaction Request due 6/8/2010. Redacted Transcript Deadline set for 6/18/2010. Release of Transcript Restriction set for 8/16/2010.(Seijas, Pamela) (Entered: 05/18/2010)
05/18/2010	<u>419</u>	REDACTED TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 05/28/08, re Transcript <u>405</u> . Redaction Request due 6/8/2010. Redacted Transcript Deadline set for 6/18/2010. Release of Transcript Restriction set for 8/16/2010.(Seijas, Pamela) (Entered: 05/18/2010)

05/18/2010	<u>420</u>	REDACTED TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 05/29/2010, re Transcript <u>406</u> . Redaction Request due 6/8/2010. Redacted Transcript Deadline set for 6/18/2010. Release of Transcript Restriction set for 8/16/2010.(Seijas, Pamela) (Entered: 05/18/2010)
05/18/2010	<u>421</u>	NOTICE OF FILING REDACTED TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings 5/9/08 7:50 a.m.; 5/13/08 7:54 a.m.; 5/14/08 7:52 a.m.; 5/15/08 7:50 a.m.;5/16/08 7:50 a.m.; 5/20/08 7:46 a.m.; 5/21/08 7:47 a.m.; 5/22/08 7:50 a.m.; 5/23/08 7:50 a.m.; 5/28/08 8:03 a.m.; 5/29/08 9:00 a.m. (Seijas, Pamela) (Entered: 05/18/2010)
05/18/2010	<u>422</u>	NOTICE OF CLERICAL ERROR, as to Defendant Michael Joseph Pepe: Due to clerical error Re: Redacted Transcript (CR) <u>410</u> (Seijas, Pamela) (Entered: 05/18/2010)
05/18/2010	<u>423</u>	NOTICE OF CLERICAL ERROR, as to Defendant Michael Joseph Pepe: Due to clerical error Re: Redacted Transcript (CR), Redacted Transcript (CR) <u>420</u> (Seijas, Pamela) (Entered: 05/18/2010)
05/18/2010	<u>424</u>	GOVERNMENT'S EX PARTE APPLICATION for an Order sealing government's transcript redaction request; Declaration of Patricia A Donahue Filed by Plaintiff USA as to Defendant Michael Joseph Pepe(shb) (Entered: 05/20/2010)
05/18/2010	<u>425</u>	ORDER by Judge Dale S. Fischer: granting <u>424</u> Ex Parte Application for Order for Government's Transcript Redaction Request Under Seal as to Michael Joseph Pepe (1) (shb) Modified on 5/14/2013 (mat). (Entered: 05/20/2010)
05/18/2010	<u>433</u>	SEALED DOCUMENT– Transcript Redaction Request. (mat) (Entered: 06/02/2010)
05/20/2010	<u>426</u>	NOTICE of Manual Filing of Government's Ex Parte Application For An Order Sealing Document; Order Sealing Government's Document; and Government's Transcript Redaction Request filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Donahue, Patricia) (Entered: 05/20/2010)
05/24/2010	<u>427</u>	NOTICE of Manual Filing of Government's Ex parte A;;ocation For An Order Sealing Government's Transcript Redaction Request; Proposed order Sealing Government's Transcript Redaction Request; and Government's Transcript Redaction Request filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Donahue, Patricia) (Entered: 05/24/2010)
05/24/2010	<u>428</u>	EX PARTE APPLICATION for Order sealing government's transcript redaction request; Declaration of Patricia A Donahue Filed by Plaintiff USA as to Defendant Michael Joseph Pepe Lodged Proposed Order.(shb) (Entered: 05/26/2010)
05/24/2010	<u>429</u>	EX PARTE APPLICATION For an Order Sealing Government's Transcript Redaction Request as to Defendant Michael Joseph Pepe. Filed by Plaintiff USA as to Defendant Michael Joseph Pepe(cbr) (Entered: 05/26/2010)
05/24/2010	<u>430</u>	ORDER by Judge Dale S. Fischer: granting <u>429</u> Exparte Application to Seal Government's Transcript Redaction Request as to Michael Joseph Pepe (1) (cbr) (Entered: 05/26/2010)
05/24/2010	<u>434</u>	SEALED DOCUMENT– Transcript Redaction Request. (mat) (Entered: 06/02/2010)
05/25/2010	<u>431</u>	ORDER by Judge Dale S. Fischer: granting <u>428</u> Ex Parte Application for Order for sealing government's transcript redaction request as to Michael Joseph Pepe (1) (shb) (Entered: 05/27/2010)
05/25/2010	<u>440</u>	SEALED DOCUMENT– Transcript Redaction Request. (mat) (Entered: 07/02/2010)
05/25/2010	<u>441</u>	SEALED DOCUMENT– Transcript Redaction Request. (mat) (Entered: 07/02/2010)
06/01/2010	<u>432</u>	NOTICE of Manual Filing of Government's Ex Parte Application For An Order Sealing Government's Transcript Redaction Request; Proposed order Sealing Government's Transcript Redaction Request; and Government's Transcript Redaction Request filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Donahue, Patricia) (Entered: 06/01/2010)

06/02/2010	<u>435</u>	REDACTED TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 5/27/08, re Transcript <u>391</u> . Redaction Request due 6/23/2010. Redacted Transcript Deadline set for 7/3/2010. Release of Transcript Restriction set for 8/31/2010.(Baird, Miriam) (Entered: 06/02/2010)
06/02/2010	<u>436</u>	NOTICE OF FILING REDACTED TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings 5/27/08 (Baird, Miriam) (Entered: 06/02/2010)
06/02/2010	<u>437</u>	SEALED DOCUMENT– Transcript Redaction Request. (mat) (Entered: 06/03/2010)
06/02/2010	<u>438</u>	GOVERNMENT'S EX PARTE APPLICATION for Order Sealing Government's Transcript Redaction Request for CR 391; Declaration of Patricia A. Donahue. Filed by Plaintiff USA as to Defendant Michael Joseph Pepe. (jp) (Entered: 06/04/2010)
06/02/2010	<u>439</u>	ORDER SEALING GOVERNMENT'S TRANSCRIPT REDACTION REQUEST by Judge Dale S. Fischer. Pursuant to 18 USC section 3509(d)(2), that the Government's Transcript Redaction Request for CR 391 <u>438</u> filed on 6/1/2010, shall be filed under seal. (jp) (Entered: 06/04/2010)
07/19/2010	<u>442</u>	NOTICE of Manual Filing of Ex Parte Application To File Under Seal; Proposed Orders, In The Alternative, Defense Motion For New Trial Based On Newly Discovered Evidence Of Interpreter Bias And Misconduct filed by Defendant Michael Joseph Pepe (Brown, Charles) (Entered: 07/19/2010)
07/21/2010	<u>443</u>	ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, DENYING WITH PREJUDICE Notice of Manual Filing re Ex Parte Application to File Under Seal (G-92) <u>442</u> . (shb) (Entered: 07/22/2010)
07/21/2010	<u>444</u>	SEALED DOCUMENT– Orders, In the Alternative (mat) (Entered: 07/23/2010)
07/28/2010	<u>445</u>	NOTICE OF MOTION AND MOTION for New Trial <i>Based On Newly Discovered Evidence Of Interpreter Bias And Misconduct</i> Filed by Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Exhibit A)(Brown, Charles) (Entered: 07/28/2010)
09/13/2010	<u>446</u>	MINUTES OF IN CHAMBERS ORDER by Judge Dale S. Fischer: as to Defendant Michael Joseph Pepe. This matter is set for a status conference on October 5, 2010 at 3:00 p.m. (shb) (Entered: 09/14/2010)
10/05/2010	<u>447</u>	MINUTES OF STATUS CONFERENCE held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe: The matter is called and counsel state their appearances. The Court and counsel discuss the interpreter translations as set forth on the record. Court Reporter: Pamela Batalo. (ake) (Entered: 10/14/2010)
01/18/2011	<u>448</u>	NOTICE of Change of Attorney Information for attorney Charles C Brown counsel for Defendant Michael Pepe. Changing Address to 3801 University Avenue, Suite 700, Riverside, CA 92501. Filed by Defendant Michael Pepe (Brown, Charles) (Entered: 01/18/2011)
05/05/2011	<u>449</u>	NOTICE of Manual Filing of Supplemental Motion for New Trial – Filed Under Seal Pursuant to 18 U.S.C. Sec. 3509(d)(2) filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 05/05/2011)
05/05/2011	<u>450</u>	NOTICE of Manual Filing of SUPPLEMENTAL MOTION FOR NEW TRIAL – PUBLIC REDACTED VERSION FILED PURSUANT TO § 18 U.S.C. § 3509(d)(2) filed by Defendant Michael Joseph Pepe (Gunn, Carlton) (Entered: 05/05/2011)
05/05/2011	<u>451</u>	SUPPLEMENTAL MOTION <u>445</u> for New Trial Based On Newly Discovered Evidence; Memorandum of Points and Authorities filed by Defendant Michael Pepe. (vdr) (Entered: 05/05/2011)
05/05/2011	<u>452</u>	SEALED DOCUMENT– Supplemental Motion for New Trial Based on Newly Discovered Evidence; Memorandum of Points and Authorities. (mat) (Entered: 05/09/2011)
06/07/2011	<u>454</u>	MINUTES OF IN CHAMBERS ORDER RE CERTAIN DOCUMENTS by Judge Dale S. Fischer: as to Defendant Michael Joseph Pepe. The Court concludes it is appropriate for the parties to brief the legal issue of whether some or all of the documents in the Courts possession should be turned over to the government, and the manner in which they should be provided. Counsel are ordered to meet and confer no

		later than 6/21/2011 and determine whether an agreement can be reached concerning this issue. If no agreement is reached, defense counsel should file a brief no later than 7/5/2011. The government may file an opposing brief no later than 7/19/2011. The defense may, but is not required to, file a reply brief no later than 7/26/2011. The Court will hear argument on this matter on 8/8/2011. (vdr) (Entered: 06/07/2011)
06/20/2011	<u>455</u>	STIPULATION for Order That Government Provide Documents to Court for Comparison, etc. filed by Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Gunn, Carlton) (Entered: 06/20/2011)
06/22/2011	<u>456</u>	ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, GRANTING Stipulation for Order that the Government Provide Documents <u>455</u> . IT IS ORDERED that: 1. The government shall provide to the Court documents bearing Bates numbers IJM100 through IJM111, IJM162, IJM164, and IJM165, so the Court maycompare the documents already in the governments possession to the documents theCourt is holding. (See order for further details) (shb) (Entered: 06/22/2011)
08/09/2011	<u>457</u>	MINUTES OF IN CHAMBERS ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe: Pursuant to the Stipulation <u>455</u> filed on June 20, 2011 and the related Order <u>456</u> filed June 22, 2011, the Court examined documents bearing Bates numbers IJM 100 through 111, IJM 162, IJM 164, and IJM 165. The parties should consider and advise the Court as to the disposition of the items. Pursuant to the stipulation, the Court maintains custody of the documents provided to the Court by defense counsel in or about October 2007. (rne) (Entered: 08/09/2011)
08/12/2011	<u>458</u>	STIPULATION for Order Hold Documents Until Defense Reviews <i>And Confer With Government</i> filed by Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Gunn, Carlton) (Entered: 08/12/2011)
08/12/2011	<u>459</u>	ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, re GRANTING Stipulation for Order to Hold Documents <u>458</u> . Defense counsel will contact the clerk upon returning from annual leave to arrange to review the material. (rne) (Entered: 08/12/2011)
09/20/2011	<u>460</u>	STIPULATION for Order filed by Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Gunn, Carlton) (Entered: 09/20/2011)
09/23/2011	<u>461</u>	ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, re Stipulation for Order <u>460</u> . IT IS HEREBY ORDERED that the Court shall continue to hold the documents bearing the numbers 3692–3700, 3716, and 3717 as Exhibit A to the defense in camera ex parte application to which they are attached, except that the documents and the ex parte application to which they areattached may be destroyed if the clerk confirms that they are merely a copy of an original application and exhibit elsewhere in the Courts file. IT IS FURTHER ORDERED that the Court shall also continue to hold the DVD marked IJM 00000197 until after sentencing, and the parties shall further conferregarding the appropriate disposition of the documents at that time. (shb) (Entered: 09/23/2011)
01/16/2013	<u>462</u>	TEXT ONLY ENTRY: ORDER SETTING STATUS CONFERENCE by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe Status Conference set for 2/4/2013 08:30 AM before Judge Dale S. Fischer. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(dp) TEXT ONLY ENTRY (Entered: 01/16/2013)
02/04/2013	<u>463</u>	MINUTES OF Status Conference held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. The matter is called and counsel state their appearances. The Court hears from counsel as to the status of the matter as set forth on the record. The next hearing is March 25, 2013 at 8:30 a.m. Court Reporter: Pamela Batalo. (bp) (Entered: 02/05/2013)
03/04/2013	<u>464</u>	NOTICE OF APPEARANCE OR REASSIGNMENT of AUSA Joey L Blanch on behalf of Plaintiff USA. Filed by Plaintiff USA. (Blanch, Joey) (Entered: 03/04/2013)
03/25/2013	<u>465</u>	MINUTES OF STATUS CONFERENCE: Status Conference held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. The matter is called and counsel state their appearances. The Court hears from counsel as to the status of the matter as set forth on the record. The parties will stipulate to a proposedbriefing schedule and

		hearing date. Court Reporter: Pamela Batalo. (shb) (Entered: 03/26/2013)
07/11/2013	<u>466</u>	TEXT ONLY ENTRY: (IN CHAMBERS) NOTICE: Judge Dale S. Fischer is participating in a pilot program regarding the submission of sealed documents. Effective July 8, 2013, all proposed documents related to under seal filings must be submitted via e-mail to the Judges Chambers e-mail at DSF_Chambers@cacd.uscourts.gov. Please refer to the judges pilot program procedures for detailed instructions for submission of sealed documents as set forth on the website in the Judges Procedures and Schedules tab, Judge Fischers Procedures. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(dp) TEXT ONLY ENTRY (Entered: 07/11/2013)
12/13/2013	<u>467</u>	TEXT ONLY ENTRY: (IN CHAMBERS) ORDER SETTING STATUS CONFERENCE by Judge Dale S. Fischer as to defendant Michael Pepe. The Court sets a status conference for January 6, 2014 at 8:30 a.m. If the parties file a stipulation and proposed order for the Court's signature setting forth a briefing schedule prior to January 2, 2014, the conference will go off calendar. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(dp) TEXT ONLY ENTRY (Entered: 12/13/2013)
12/13/2013	<u>468</u>	STIPULATION for Order Briefing Schedule and Hearing filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Donahue, Patricia) (Entered: 12/13/2013)
12/16/2013	<u>469</u>	ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, re Stipulation for Order re Briefing Schedule <u>468</u> . 1. January 13, 2014 is the deadline for the government to file oppositions to the motions filed by defendant for a new trial (CR 445, 449-452); 2. January 27, 2014 is the deadline for defendant to file any reply papers; 3. February 3, 2014, at 8:30 a.m., is the hearing on the motions. (shb) (Entered: 12/16/2013)
01/13/2014	<u>470</u>	EXHIBIT A-E to MOTION for New Trial <i>Based On Newly Discovered Evidence Of Interpreter Bias And Misconduct</i> <u>445</u> filed by Plaintiff USA as to Defendant Michael Joseph Pepe. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E)(Donahue, Patricia) (Entered: 01/13/2014)
01/14/2014	<u>471</u>	OPPOSITION to MOTION for New Trial <i>Based On Newly Discovered Evidence Of Interpreter Bias And Misconduct</i> <u>445</u> filed by Plaintiff USA as to Defendant Pepe. (Donahue, Patricia) (Entered: 01/14/2014)
01/14/2014	<u>472</u>	BRIEF Filed by Plaintiff USA as to Defendant Michael Joseph Pepe <i>Oppositon to New Trial Motion Based on Alleged Witness Recantation</i> RE: Supplement to Motion (CR) <u>451</u> . (Donahue, Patricia) (Entered: 01/14/2014)
01/14/2014	<u>473</u>	DECLARATION of Special Agent Eddy Wang filed by Plaintiff USA as to Defendant Michael Joseph Pepe RE: Supplement to Motion (CR) <u>451</u> , Brief (non-motion, non-appeal) <u>472</u> in <i>Support of Opposition to New Trial Motion based on Alleged Witness Recantation</i> (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit)(Donahue, Patricia) (Entered: 01/14/2014)
01/14/2014	<u>474</u>	NOTICE of Manual Filing of Under Seal Documents filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Donahue, Patricia) (Entered: 01/14/2014)
01/15/2014	<u>475</u>	SEALED DOCUMENT- GOVERNMENT'S EXPARTE APPLICATION for Order Sealing Document; Declaration of Patricia A. Donahue. (mat) (Entered: 01/16/2014)
01/15/2014	<u>476</u>	SEALED DOCUMENT- ORDER Sealing Document. (mat) (Entered: 01/16/2014)
01/15/2014	<u>477</u>	SEALED DOCUMENT- SUPPLEMENT DECLARATION of Special Agent Eddy Wang Re: Government's Opposition to Motion for New Trial Based on Newly Discovered Evidence of Alleged Witness Recantation. (mat) (Entered: 01/16/2014)
01/15/2014	<u>478</u>	SEALED DOCUMENT- GOVERNMENT'S EXPARTE APPLICATION for Order Sealing Document; Declaration of Patricia A. Donahue.(mat) (Entered: 01/16/2014)
01/15/2014	<u>479</u>	SEALED DOCUMENT- ORDER Sealing Document. (mat) (Entered: 01/16/2014)

01/15/2014	<u>480</u>	SEALED DOCUMENT– SUPPLEMENT DECLARATION of Special Agent Eddy Wang Re: Government's Opposition to Motion for New Trial Based on Newly Discovered Evidence of Alleged Witness Recantation. (mat) (Entered: 01/16/2014)
01/27/2014	<u>481</u>	REPLY In Support MOTION for New Trial <i>Based On Newly Discovered Evidence Of Interpreter Bias And Misconduct</i> <u>445</u> filed by Defendant Michael Pepe. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Brown, Charles) (Entered: 01/27/2014)
02/01/2014	<u>482</u>	NOTICE OF MOTION AND MOTION to Withdraw <i>Supplemental Motion for New Trial Based on Newly Discovered Evidence of Witness Recantation</i> Filed by Defendant Michael Joseph Pepe Motion set for hearing on 2/3/2014 at 08:30 AM before Judge Dale S. Fischer. (Brown, Charles) (Entered: 02/01/2014)
02/03/2014	<u>483</u>	MINUTES OF STATUS CONFERENCE; HEARING ON MOTION FOR NEW TRIAL held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe: The matter is called and counsel state their appearances. Also present are the governments interpreters, Rithy Lim and Chau Stotemyre, and Special Agent Eddy Wang. The Court hears oral argument as set forth on the record. The matter is under submission and a written ruling will issue. The matter is set for sentencing on March 3, 2014 at 10:00 a.m. Court Reporter: Pamela Batalo. (kti) (Entered: 02/03/2014)
02/05/2014	<u>484</u>	MINUTES (IN CHAMBERS): ORDER re Motion for New Trial <u>445</u> by Judge Dale S. Fischer as to Michael Joseph Pepe (1): The Court in no way condones what appears to be egregious misconduct by the case agent and Vietnamese interpreter. Nonetheless, the above errors likely reflect the inherent imprecision of translation, which is only heightened in the context of translating for minors. Regardless of their cause, any mistranslations did not have a material effect on the trial such that a new trial would probably result in acquittal especially given the voluminous evidence of Pepes guilt. See Sarno, 73 F.3d at 1507; see also Long, 301 F.3d at 1103 (We generally view interpreter problems within the context of an entire trial,... and the government had other evidence and witnesses... to support its case against Long.). For the reasons stated above and the reasons stated in the Opposition, Pepes motion for a new trial is DENIED. IT IS SO ORDERED. (See order for details.) (kti) (Entered: 02/05/2014)
02/25/2014	<u>485</u>	TEXT ONLY ENTRY: (IN CHAMBERS) ORDER CONTINUING SENTENCING by Judge Dale S. Fischer as to defendant Michael Joseph Pepe. On agreement of the parties, the sentencing has been rest to 2/28/2014 09:00 AM before Judge Dale S. Fischer. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(dp) TEXT ONLY ENTRY (Entered: 02/25/2014)
02/26/2014	<u>486</u>	SUPPLEMENTAL FACTUAL CORRECTIONS TO PRESENTENCE REPORT filed by Defendant Michael Joseph Pepe (Brown, Charles) (Entered: 02/26/2014)
02/27/2014	<u>487</u>	EX PARTE APPLICATION for Order for Order Sealing Document Filed by Plaintiff USA as to Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Donahue, Patricia) (Entered: 02/27/2014)
02/28/2014	<u>488</u>	SEALED DOCUMENT – EX PARTE APPLICATION FOR ORDER SEALING SUBMISSION OF SUPPLEMENTAL RESTITUTION INFORMATION; MEMORANDUM Filed by Plaintiff USA as to Defendant Michael Joseph Pepe(shb) Modified on 2/28/2014 (shb). (Entered: 02/28/2014)
02/28/2014	<u>489</u>	SEALED DOCUMENT – ORDER by Judge Dale S. Fischer (shb) (Entered: 02/28/2014)
02/28/2014	<u>490</u>	SEALED DOCUMENT – GOVERNMENT'S SUPPLEMENTAL SUBMISSION RE RESTITUTION filed by Plaintiff USA as to Defendant Michael Joseph Pepe (shb) (Entered: 02/28/2014)
02/28/2014	<u>491</u>	MINUTES OF SENTENCING AND JUDGMENT HEARING: SENTENCING Hearing held before Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. Defendant Michael Joseph Pepe (1), Count(s) 1–2, The Court grants the governments request to dismiss the underlying Indictment in this matter.; Count(s) 1s–6s, 7s, Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that defendant, Michael Joseph Pepe, is hereby committed on Counts 1 through 7 of the First Superseding Indictment to the custody of the Bureau of Prisons for a term of 210 years. This term consists of 30 years on each of Counts 1 through 7 of the First Superseding Indictment, to be served consecutively. Supervised Release for a term of

		life. comply with the rules and regulations of the U. S. Probation Office and General Order 318 and General Order No. 01-05.. A special assessment of \$700 is due immediately. Restitution in the amount of \$242,213 pursuant to USC 2248. All fines waived. The Court grants the governments request to dismiss the underlying Indictment in this matter. Defendant advised of right of appeal. Court Reporter: Pamela Batalo. (shb) (Entered: 03/03/2014)
02/28/2014	<u>492</u>	JUDGMENT AND COMMITMENT by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe (1), Count(s) 1-2, The Court grants the governments request to dismiss the underlying Indictment in this matter.; Count(s) 1s-6s, 7s, Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that defendant, Michael Joseph Pepe, is hereby committed on Counts 1 through 7 of the First Superseding Indictment to the custody of the Bureau of Prisons for a term of 210 years. This term consists of 30 years on each of Counts 1 through 7 of the First Superseding Indictment, to be served consecutively. Supervised Release for a term of life. comply with the rules and regulations of the U. S. Probation Office and General Order 318 and General Order No. 01-05.. A special assessment of \$700 is due immediately. Restitution in the amount of \$242,213 pursuant to USC 2248. All fines waived. The Court grants the governments request to dismiss the underlying Indictment in this matter. (shb) (Entered: 03/03/2014)
03/03/2014	<u>493</u>	NOTICE OF APPEAL to Appellate Court filed by Defendant Michael Joseph Pepe re Judgment and Commitment,,,, <u>492</u> . Filing fee WAIVED. (Brown, Charles) (Entered: 03/03/2014)
03/04/2014	<u>495</u>	NOTIFICATION by Circuit Court of Appellate Docket Number 14-50095 as to Defendant Michael Joseph Pepe, 9th CCA regarding Notice of Appeal to USCA - Final Judgment <u>493</u> . (mat) (Entered: 03/07/2014)
03/21/2014	<u>496</u>	TRANSCRIPT ORDER re: Court of Appeal case number 14-50095, as to Defendant Michael Joseph Pepe. Court Reporter.Order for: Criminal Appeal. Transcript portion requested:Sentencing on 02-28-14. Pre-Trial Proceeding: Status Conf 3-19-07, Motion Hrg 07-23-07, Motion Hrg 10-29-07, Motion Hrg 12-03-07, Status Conf 12-04-07, In Camera Hrg 1-04-08, Arraignment Mtn Hrg 1-07-08, Evidentiary Hrg 2-06-08, Status Conf 3-10-08, Motion Hrg 3-31-08, Pretrial Conf 4-14-08, Motion Hrg 4-29-08, Daubert Hrg 5-05-08,. Other: Trial day 1 5-07-08, Trial day 2 5-9-08, Trial day 3 5-13-08, Trial day 4 5-14-08, Trial Day 5 5-15-08, Trial day 6 5-16-08, Trial day 7 5-20-08, Trial day 8 5-21-08, Trial day 9 5-22-08, Trial day 10 5-23-08, Trial day 11 5-27-08, Trial day 12 5-28-08, Trial day 13 5-29-08, Staus Con 9-03-08, Motion Hrg 9-18-08, Bifurcated Sentencing 9-25-08, Evidentiary Hrg 9-02-09, Status Conf 10-05-10, Status Conf 2-04-13, Status Conf 3-25-13, Status Conf 2-03-14,. Criminal case appeal. 60 day deadline automatically set (Attachments: # <u>1</u> Attachment to Transcript Designation, # <u>2</u> Voucher court reporter Schweitzer, # <u>3</u> voucher court reporter Stride, # <u>4</u> voucher 1 court reporter Seijas Batalo, # <u>5</u> voucher 2 court reporter Seijas Batalo, # <u>6</u> voucher 3 court reporter Seijas Batalo)(Brown, Charles) (Entered: 03/21/2014)
04/17/2014	<u>497</u>	TRANSCRIPT ORDER re: Court of Appeal case number 14-50095, as to Defendant Michael Joseph Pepe. Court Reporter.Order for: Criminal Appeal. Transcript portion requested: Other: Sealed Proceedings only for 12-3-2007, Sealed proceedings only for 2-6-2008, Sealed proceedings only for 5-7-2008. Criminal case appeal. 60 day deadline automatically set (Attachments: # <u>1</u> Voucher)(Brown, Charles) (Entered: 04/17/2014)
04/17/2014	<u>498</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 03/19/07, 8:35 a.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 5/8/2014. Redacted Transcript Deadline set for 5/18/2014. Release of Transcript Restriction set for 7/16/2014.(Seijas, Pamela) (Entered: 04/17/2014)
04/17/2014	<u>499</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 01/07/08; 10:53 a.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public

		terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 5/8/2014. Redacted Transcript Deadline set for 5/18/2014. Release of Transcript Restriction set for 7/16/2014.(Seijas, Pamela) (Entered: 04/17/2014)
04/17/2014	<u>500</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 03/10/08; 9:10 a.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 5/8/2014. Redacted Transcript Deadline set for 5/18/2014. Release of Transcript Restriction set for 7/16/2014.(Seijas, Pamela) (Entered: 04/17/2014)
04/17/2014	<u>501</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 03/31/08; 11:54 a.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 5/8/2014. Redacted Transcript Deadline set for 5/18/2014. Release of Transcript Restriction set for 7/16/2014.(Seijas, Pamela) (Entered: 04/17/2014)
04/17/2014	<u>502</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 04/14/08; 11:11 a.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 5/8/2014. Redacted Transcript Deadline set for 5/18/2014. Release of Transcript Restriction set for 7/16/2014.(Seijas, Pamela) (Entered: 04/17/2014)
04/17/2014	<u>503</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 04/29/08; 3:12 p.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 5/8/2014. Redacted Transcript Deadline set for 5/18/2014. Release of Transcript Restriction set for 7/16/2014.(Seijas, Pamela) (Entered: 04/17/2014)
04/17/2014	<u>504</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 09/03/08; 3:06 p.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 5/8/2014. Redacted Transcript Deadline set for 5/18/2014. Release of Transcript Restriction set for 7/16/2014.(Seijas, Pamela) (Entered: 04/17/2014)
04/17/2014	<u>505</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 09/18/08; 3:00 p.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 5/8/2014. Redacted Transcript Deadline set for 5/18/2014. Release of Transcript Restriction set for 7/16/2014.(Seijas, Pamela) (Entered: 04/17/2014)
04/17/2014	<u>506</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 09/25/08; 2:35 p.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction

		Request due 5/8/2014. Redacted Transcript Deadline set for 5/18/2014. Release of Transcript Restriction set for 7/16/2014.(Seijas, Pamela) (Entered: 04/17/2014)
04/17/2014	<u>507</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 09/02/09; 2:37 p.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 5/8/2014. Redacted Transcript Deadline set for 5/18/2014. Release of Transcript Restriction set for 7/16/2014.(Seijas, Pamela) (Entered: 04/17/2014)
04/17/2014	<u>508</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 10/05/10; 3:00 p.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 5/8/2014. Redacted Transcript Deadline set for 5/18/2014. Release of Transcript Restriction set for 7/16/2014.(Seijas, Pamela) (Entered: 04/17/2014)
04/17/2014	<u>509</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 02/04/13; 9:21 a.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 5/8/2014. Redacted Transcript Deadline set for 5/18/2014. Release of Transcript Restriction set for 7/16/2014.(Seijas, Pamela) (Entered: 04/17/2014)
04/17/2014	<u>510</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 3/25/13; 8:45 a.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 5/8/2014. Redacted Transcript Deadline set for 5/18/2014. Release of Transcript Restriction set for 7/16/2014.(Seijas, Pamela) (Entered: 04/17/2014)
04/17/2014	<u>511</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 02/03/14; 9:22 a.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 5/8/2014. Redacted Transcript Deadline set for 5/18/2014. Release of Transcript Restriction set for 7/16/2014.(Seijas, Pamela) (Entered: 04/17/2014)
04/17/2014	<u>512</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 2/28/14; 9:01 a.m.. Court Reporter/Electronic Court Recorder: Pamela A. Batalo, phone number www.pamelabatalo.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 5/8/2014. Redacted Transcript Deadline set for 5/18/2014. Release of Transcript Restriction set for 7/16/2014.(Seijas, Pamela) (Entered: 04/17/2014)
04/17/2014	513	NOTICE OF FILING TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings 3/19/07, 8:35 a.m.; 1/7/08, 10:53 a.m.; 3/10/08, 9:10 a.m.; 3/31/08 11:54 a.m.; 4/14/08 11:11 a.m.; 4/29/08 3:12 p.m.; 9/3/08, 3:06 p.m.; 9/18/08 3:00 p.m.; 9/25/08, 2:35 p.m.; 9/2/09, 2:37 p.m.; 10/5/10, 3:00 p.m.; 2/4/13, 9:21 a.m.; 3/25/13, 8:45 a.m.; 2/3/14 9:22 a.m.; 2/28/14, 9:01 a.m. re Transcript <u>508</u> , <u>501</u> , <u>509</u> , <u>507</u> , <u>506</u> , <u>500</u> , <u>498</u> , <u>503</u> , <u>504</u> , <u>511</u> , <u>502</u> , <u>510</u> , <u>499</u> , <u>512</u> , <u>505</u> THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(Seijas, Pamela) TEXT ONLY ENTRY (Entered: 04/17/2014)

04/29/2014	<u>518</u>	TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 5–13–08 PM Session. Court Reporter/Electronic Court Recorder: Lynne Smith, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 5/20/2014. Redacted Transcript Deadline set for 5/30/2014. Release of Transcript Restriction set for 7/28/2014.(pfb) (Entered: 04/29/2014)
04/29/2014	519	NOTICE OF FILING TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings 5–13–08 PM Session re Transcript <u>518</u> THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(pfb) TEXT ONLY ENTRY (Entered: 04/29/2014)
05/08/2014	<u>520</u>	EX PARTE APPLICATION for Disclosure of Sealed Transcripts to Defense for Purposes of Appeal Filed by Defendant Michael Joseph Pepe. (Attachments: # <u>1</u> Proposed Order)(Attorney James H Locklin added to party Michael Joseph Pepe(pty:dft)) (Locklin, James) (Entered: 05/08/2014)
05/09/2014	<u>521</u>	EX PARTE APPLICATION for Order Sealing Government's Transcript Redaction Request; Declaration of Patricia A. Donahue Filed by Plaintiff USA as to Defendant Michael Joseph Pepe. (Attachments: # <u>1</u> Proposed Order) (Donahue, Patricia) (Entered: 05/09/2014)
05/09/2014	<u>522</u>	ORDER by Judge Dale S. Fischer, GRANTING <u>520</u> Ex Parte Application for Disclosure of Sealed Transcripts to Defense for Purposes of Appeal as to Michael Joseph Pepe (1) (es) (Entered: 05/12/2014)
05/09/2014	<u>523</u>	ORDER SEALING GOVERNMENT'S TRANSCRIPT REDACTION REQUEST by Judge Dale S. Fischer, GRANTING <u>521</u> Government's Ex Parte Application for Order Sealing Government's Transcript Redaction Request as to Michael Joseph Pepe (1) (es) (Entered: 05/12/2014)
05/09/2014	<u>524</u>	SEALED DOCUMENT – REQUEST TO REDACT TRANSCRIPT submitted to Court Reporter Rita Lynne Smith Nicholson re Transcript <u>518</u> filed by Plaintiff USA as to Defendant Michael Joseph Pepe. (shb) (Entered: 05/14/2014)
05/19/2014	<u>525</u>	MINUTES OF IN CHAMBERS ORDER RE RE CERTAIN DOCUMENTS by Judge Dale S. Fischer: as to Defendant Michael Joseph Pepe. The parties are ordered to confer and to advise the Court concerning the appropriate disposition of the documents no later than June 16. If the parties conclude the documents should remain in the possession of the Clerk of the Court, they are to advise of the legal authority supporting that position. (shb) (Entered: 05/19/2014)
06/10/2014	<u>528</u>	EX PARTE APPLICATION for Order for Seal Document Filed by Plaintiff USA as to Defendant Michael Joseph Pepe. (Attachments: # <u>1</u> Proposed Order) (Donahue, Patricia) (Entered: 06/10/2014)
06/11/2014	<u>530</u>	ORDER by Judge Dale S. Fischer: granting <u>528</u> Ex Parte Application for Order for sealing Government's Transcript Redaction Request as to Michael Joseph Pepe (1) (shb) (Entered: 06/13/2014)
06/11/2014	<u>535</u>	SEALED DOCUMENT– TRANSCRIPT REDACTED REQUEST. (mat) (Entered: 06/19/2014)
06/12/2014	<u>529</u>	STIPULATION for Order That The Court Hold Certain Documents At Issue filed by Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Brown, Charles) (Entered: 06/12/2014)
06/12/2014	<u>531</u>	ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe, IT IS HEREBY ORDERED THAT the Court shall continue to hold the following documents while the defendants appeal is pending: (1) documents submitted to the Court in camera by the defense in October 2007; and (2) documents and a DVD provided to the Court in camera in response to a subpoena. Within 21 days after the Ninth Circuit issues its mandate in this case, the defendant shall file a status report, stipulation, or motion concerning the appropriate disposition of these documents. <u>529</u> (es) (Entered: 06/13/2014)

06/13/2014	<u>534</u>	ORDER of USCA filed as to Defendant Michael Joseph Pepe, CCA #14-50095. The appellant's unopposed motion for an extension of time in which to file the opening brief is granted. The brief schedules have been set. Order received in this district on 6/13/14. (mat) (Entered: 06/18/2014)
06/17/2014	<u>532</u>	REDACTED TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 5-13-08 PM Session, re Transcript <u>518</u> . Redaction Request due 7/8/2014. Redacted Transcript Deadline set for 7/18/2014. Release of Transcript Restriction set for 9/15/2014.(pfb) (Entered: 06/17/2014)
06/18/2014	<u>533</u>	REDACTED TRANSCRIPT filed as to Defendant Michael Joseph Pepe for proceedings held on 09/25/08, re Transcript <u>506</u> . Redaction Request due 7/9/2014. Redacted Transcript Deadline set for 7/19/2014. Release of Transcript Restriction set for 9/16/2014.(Seijas, Pamela) (Entered: 06/18/2014)
08/14/2014	<u>536</u>	EX PARTE APPLICATION for Disclosure of Non-Public Docket and Jury Note and Verdict to Defense for Purposes of Appeal. Filed by Defendant Michael Joseph Pepe. (Attachments: # <u>1</u> Proposed Order) (Locklin, James) (Entered: 08/14/2014)
08/14/2014	<u>537</u>	ORDER by Judge Dale S. Fischer: IT IS HEREBY ORDERED THAT: The Court clerk shall provide Defendant's counsel with a copy of the Court's complete, non-public docket. This docket sheet shall remain under seal as to the public, but counsel may provide a copy of it to the government and may file it under seal in the Ninth Circuit if necessary. The Court clerk shall either: file public versions of the jury's not (Docket No. 297) and the jury's verdict (Docket No. 299) that redact any juror names; or provide Defendant's counsel with unredacted copies of the jury's note and verdict. These documents shall remain under seal as to the public, but counsel may provide copies of them to the government and may file them under seal in the Ninth Circuit if necessary. Counsel may obtain copies of the documents from the records department, granting <u>536</u> Ex Parte Application for Disclosure as to Michael Joseph Pepe (1) (bp) (Entered: 08/14/2014)
10/24/2014	<u>538</u>	ORDER of USCA filed as to Defendant Michael Joseph Pepe, CCA #14-50095. The appellant's unopposed motion for a second extension of time in which to file the opening brief is granted. [See document for further information]. Order received in this district on 10/24/2014. (car) (Entered: 10/29/2014)
02/05/2015	<u>539</u>	EX PARTE APPLICATION for Disclosure of Sealed Order Dated May 9, 2008 (Docket No. 245) to Defense for Purposes of Appeal. Filed by Defendant Michael Joseph Pepe. (Attachments: # <u>1</u> Proposed Order) (Locklin, James) (Entered: 02/05/2015)
02/05/2015	<u>540</u>	ORDER by Judge Dale S. Fischer: <u>539</u> "see order for specifics" (bp) (Entered: 02/06/2015)
02/25/2015	<u>541</u>	ORDER of USCA filed as to Defendant Michael Joseph Pepe, CCA #14-50095. The appellant's unopposed motion for a third extension of time in which to file the opening brief is granted. Order received in this district on 2/25/15. (car) (Entered: 02/25/2015)
02/26/2015	<u>542</u>	MINUTES OF IN CHAMBERS ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe re docket numbers 383, 384, and 385. See Minute Order for specifics. (dp) (Entered: 02/26/2015)
02/27/2015	<u>543</u>	STIPULATION to Amend/Correct <i>Stipulation to Correct/Modify Record on Appeal re Jury Instructions and Verdict Form Pursuant to Fed. R. App.Proc. 10(e)</i> filed by Defendant Michael Joseph Pepe (Attachments: # <u>1</u> Proposed Order)(Brown, Charles) (Entered: 02/27/2015)
02/27/2015	<u>544</u>	NOTICE of Manual Filing of Stipulation to Correct/Modify Record on Appeal re Jury Instructions and Verdict Form Pursuant to Fed. R.; Exhibits Under Seal filed by Defendant Michael Joseph Pepe (Brown, Charles) (Entered: 02/27/2015)
03/02/2015	<u>545</u>	ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe: GOOD CAUSE HAVING BEEN SHOWN, IT IS HEREBY ORDERED THAT, pursuant to Fed. R. App. Proc. 10(e), the record shall be corrected and modified to reflect that the parties' Stipulation to Correct/Modify Record on Appeal re Jury Instructions and Verdict Form accurately reflects the documents that were before the Court during defendant's trial. <u>544</u> (cr) (Entered: 03/02/2015)

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03/02/2015	<u>546</u>	ORDER by Judge Dale S. Fischer as to Defendant Michael Joseph Pepe. IT IS HEREBY ORDERED THAT, pursuant to Fed.R.App.Proc. 10(e), the record shall be corrected and modified to reflect that the parties' Stipulation to Correct/Modify Record on Appeal re Video Testimony accurately reflects the video testimony that was presented at defendant's trial. (bp) (Entered: 03/04/2015)
03/03/2015	<u>547</u>	**SEALED** EX PARTE APPLICATION TO FILE STIPULATION TO CORRECT/MODIFY RECORD AND VIDEO EXHIBITS UNDER SEAL Filed by Defendant Michael Joseph Pepe. (bp) (Entered: 03/06/2015)
03/03/2015	<u>548</u>	SEALED DOCUMENT– NOTICE OF LODGING Exhibits A, B and C to Defendant's Stipulation to Correct/Modify Record on Appeal Re Video Testimony Pursuant to Fed R. App. Proc. 10(e) by Defendant Michael Joseph Pepe (mat) (Entered: 03/10/2015)
03/03/2015	<u>549</u>	SEALED DOCUMENT– STIPULATION to Correct / Modify Record on Appeal re Video Testimony Pursuant to Fed. R. App. Proc. 10(e) (mat) (Entered: 03/10/2015)
03/03/2015	<u>550</u>	SEALED DOCUMENT– STIPULATION to Correct / Modify Record on Appeal re Video Testimony Pursuant to Fed. R. App. Proc. 10(e). (Attachments: Part 2)(mat) (Entered: 03/10/2015)

Certificate of Service

I hereby certify that on May 28, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

By: /s/ James H. Locklin
JAMES H. LOCKLIN
Deputy Federal Public Defender